

**Title 8. Judiciary - Chapter 803**  
**ONEIDA JUDICIARY RULES OF CIVIL PROCEDURE**

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**803.1. Purpose and Policy**

803.1-1. The purpose of this Law is to govern all civil actions that fall under the jurisdiction of the Oneida Tribe of Indians of Wisconsin.

803.1-2. It is the policy of the Tribe that there should be a consistent set of rules governing the process for civil claims, in order to ensure equal and fair treatment to all persons who come before the Tribal Courts to have their disputes resolved.

**803.2. Adoption; Amendment; Repeal**

803.2-1. This Law is adopted by the Oneida Business Committee by resolution BC-04-25-14-A.

803.2-2. This Law may be amended or repealed by the Oneida Business Committee or the Oneida General Tribal Council pursuant to the procedures set out in the Legislative Procedures Act.

803.2-3. Should a provision of this Law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this Law which are considered to have legal force without the invalid portions.

803.2-4. In the event of a conflict between a provision of this Law and a provision of another law, the provisions of this Law shall control, except where the specific laws that fall under this Court's jurisdiction provide for more specific rules of procedure, those laws shall supersede.

803.2-5. This Law is adopted under authority of the Constitution of the Oneida Tribe of Indians of Wisconsin.

**803.3 Definitions**

803.3-1. The definitions below shall govern the words and phrases used within this Law. All words not defined herein shall be used in their ordinary and everyday sense.

(a) "Advocate" shall mean an Oneida non-attorney advocate as provided by law and

- other advocate who is admitted to practice law and is presented to the Court as the representative or advisor to a party.
- (b) “Affidavit” shall mean a written statement voluntarily made under an oath or affirmation administered by a person authorized to do so by law.
  - (c) “Affidavit of service” shall mean a document signed under oath or affirmation by the server certifying service which sets out the time, date and place that the party was served.
  - (d) “Answer” shall mean a formal written statement addressing the dispute on the merits and presents any defenses and counterclaims.
  - (e) “Court of Appeals” shall mean the Court of Appeals of the Judiciary.
  - (f) “Attorney” shall mean a person trained and licensed to represent another person in Court, to prepare documents and to give advice or counsel on matters of law.
  - (g) “Attorney’s fees” shall mean compensation for legal services performed by an attorney or advocate for a client, in or out of Court.
  - (h) “Clerk” shall mean the clerk of the Trial Court including, when appropriate, the Family Court clerk.
  - (i) “Complaint” shall mean the initial pleading setting out the case or cause of action on which relief is sought by the plaintiff.
  - (j) “Counterclaim” shall mean a claim set up and urged by the defendant in opposition to or reduction of the claim presented by the plaintiff.
  - (k) “Court” shall mean the Trial Court of the Oneida Judiciary. All references to “Court” shall also apply to the Family Court unless specified otherwise.
  - (l) “Crossclaim” shall mean a claim that is made by a party in a suit that is in opposition to a claim already made.
  - (m) “Day” or “days” shall mean calendar days, except where otherwise specified.
  - (n) “Defendant” shall mean the party, including a respondent in the Family Court, against whom relief or recovery is sought in an action or suit. All references to “defendant” apply to “respondent.”
  - (o) “Deposition” shall mean the taking and recording of testimony of a witness under oath before a Court reporter in a place away from the courtroom before trial.
  - (p) “Discovery” shall mean the entire efforts to obtain information before trial through demands for production of documents, depositions, interrogatories, requests for admissions, examination of the scene and the petitions and motions employed to enforce discovery rights.
  - (q) “Electronic” shall mean an electronic communication system, including, but is not limited to E-mail, used for filing papers with the Court or serving papers on any other party.
  - (r) “Ex Parte” shall mean any contact with the Judge regarding a pending case where the opposing party has not received notice, is not present, and has not consented to the communication.
  - (s) “Excusable neglect” shall mean a legitimate excuse for the failure to take some proper step at the proper time. The failure to act shall have been the act of a reasonably prudent person under the same circumstances; however, it shall not include situations brought about by the moving party’s own carelessness or inaction.
  - (t) “Family Court” shall mean the Family Court pursuant to the Family Court Law, Chapter 151 of the Oneida Code of Laws. All references to “Court” shall also apply to the Family Court unless specified otherwise.
  - (u) “Good cause” shall mean a substantial reason or legal justification for failing to

- appear, to act, or respond to an action.
- (v) “Interlocutory injunction” shall mean a Court order, made during the trial, to compel or prevent a party from doing certain acts pending the final determination of the case.
  - (w) “Interrogatory” shall mean a set of written questions to a party to a lawsuit asked by the opposing party as part of the pre-trial discovery process.
  - (x) “Judge” shall mean the person presiding over a case to hear and decide legal matters.
  - (y) “Judgment” shall mean a determination of a Court of law including a decree and any order from which an appeal lies. The terms decision, opinion, judgment and order are generally used similarly throughout this Law.
  - (z) “Judiciary” shall mean the judicial system that was established by Oneida General Tribal Council resolution GTC #1-07-13-B to administer the judicial authorities and responsibilities of the Tribe.
  - (aa) “Motion” shall mean an application to the Court for any order, judgment or other form of relief requested separate from the original complaint.
  - (bb) “Notice” shall mean a legal notification in a written format or through a formal announcement with proof of delivery to the recipient making the recipient aware of a legal process affecting their rights, obligations or duties.
  - (cc) “Order” shall mean a decision by the Court or Judge, not included in a judgment, which determines some point or directs some step in the proceedings.
  - (dd) “Peacemaker” shall mean an individual appointed by the parties or the Court who works with parties in a Court matter to attempt to resolve a dispute in a peaceful manner and in accordance with the customs of the Tribe.
  - (ee) “Plaintiff” shall mean the party, including a petitioner initiating an action in the Family Court, who sues in a civil action. All references to “plaintiff” apply to “petitioner.”
  - (ff) “Pleading” shall mean the formal allegations by the parties of their respective claims and defenses, for the judgment of the Court.
  - (gg) “Proof of service” shall mean proof that a legal document has been delivered and accepted by the party it is intended for by means of filing a copy of the return receipt when certified mail is utilized or by an affidavit of service.
  - (hh) “Punitive damages” shall mean monetary compensation awarded to an injured party that goes beyond that which is necessary to compensate the individual for losses and that is intended to punish the wrongdoer.
  - (ii) “Purge” shall mean that a person or party has done what the Court required and is no longer in contempt of Court.
  - (jj) “Reservation” shall mean all land within the exterior boundaries of the Reservation of the Oneida Tribe of Indians of Wisconsin, as created pursuant to the 1838 Treaty with the Oneida, 7 Stat. 566, and any lands added thereto pursuant to federal law.
  - (kk) “Service” shall mean the delivery of a legal document that notifies the recipient of the commencement of a legal action or proceeding in which he or she is involved and is thereby advised or warned of some action or step which he or she is commanded to take or to forbear.
  - (ll) “Subject-matter jurisdiction” shall mean that the Court has the authority to hear the type of case or controversy in its Court.
  - (mm) “Subpoena” shall mean a formal document that orders a named individual to appear before the Court at a fixed time to give testimony and/or produce documents.
  - (nn) “Summary judgment” shall mean a pre-trial Court order ruling that there are no disputed material issues of fact and that the movant is entitled to judgment as a matter

of law without trial.

- (oo) “Summons” shall mean an order notifying a defendant to appear in person before the Court.
- (pp) “Trial Court” shall mean a Court of the Judiciary where evidence and testimony are first introduced, received, and considered. The Court of Appeals shall not be included in this definition.
- (qq) “Tribal Holiday” shall mean any holiday listed in the Tribe’s Human Resources Department’s published holiday observance schedule or any day designated by the Oneida Business Committee or General Tribal Council as a Tribal Holiday.
- (rr) “Tribal law” shall mean an adopted Tribal code, act, statute or ordinance.
- (ss) “Tribe” or “Tribal” shall mean the Oneida Tribe of Indians of Wisconsin.
- (tt) “Without prejudice” shall mean that none of the rights or privileges of the individual involved are considered to be lost or waived. The parties are free to litigate the matter in a subsequent action, as though the dismissed action had not been started.

#### **803.4. General Provisions**

803.4-1. *Forms of Action.* There shall be one (1) form of action, known as a “civil action”.

803.4-2. *Immunity Not Waived.* No section, rule or part thereof, of this Law shall be construed in any way to waive the sovereign immunity of the Tribe or the judicial immunity of the Judges within the Judiciary.

803.4-3. *Other Rules of Procedure Used.* All matters and proceedings not specifically set forth herein shall be handled in accordance with reasonable justice, as determined by the Judiciary. Where this Law is ambiguous or does not address a situation, the Federal Rules of Civil Procedure or Section 801 of the Wisconsin Statutes may be used as a guide. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in Tribal law unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

803.4-4. At every stage of the proceeding, the Court may disregard any technical error or defect in a failure to comply with this Law as long as the error or noncompliance does not affect the substantive rights of the parties; particularly those not represented by an attorney.

803.4-5. All communications, service, etc. shall be directed to a party’s attorney or advocate, if represented by an attorney or advocate.

803.4-6. *Application of this Law.* This Law shall be followed by the Court, except where other Court rules are more specific, then those laws shall supersede. This Law shall apply to proceedings conducted by the Tribe’s Personnel Commission, except where the Tribe’s personnel policies and procedures are more specific, then those shall supersede. This Law shall not apply to the Mediation or Peacekeeping divisions of the Trial Court.

803.4-7. *Jurisdiction.* Jurisdiction shall be established as provided in the Judiciary, Chapter 150 of the Oneida Code of Laws.

803.4-8. *Standard of Proof.* All matters to be decided by the Court shall be proven by a preponderance of the evidence, unless specified otherwise.

#### **803.5. Commencement of Action; Summons; Service of Process; Filing**

803.5-1. *Complaint.* A civil action shall be commenced upon the filing of a complaint and payment of a filing fee or other fee where specified by law or Court Rule.

- (a) *Contents.* A complaint shall include the following:
  - (1) The name of the Court;
  - (2) The full name and address of each plaintiff;

- (3) The full name and address of each defendant;
- (4) Why each defendant is being sued;
- (5) Facts supporting each claim;
- (6) Why this Court has jurisdiction;
- (7) Specifically what relief is sought from each defendant; and
- (8) A summons.

803.5-2. *Summons.* A complaint shall include a summons.

(a) *Contents.* A summons shall:

- (1) Name the Court and the parties;
- (2) Be directed to defendant;
- (3) State the name and address of the plaintiff's attorney or advocate, or if unrepresented, of the plaintiff;
- (4) State the date and time to appear before the Court;
- (5) Notify the defendant that a failure to appear and defend may result in a default judgment against the defendant for the relief demanded in the complaint; and
- (6) Be signed by the clerk, and the plaintiff or plaintiff's attorney or advocate.

(b) *Amendments.* The Court may permit a summons to be amended within ten (10) days of filing such summons.

(c) *Issuance.* At the time of filing the complaint, the plaintiff shall present a summons to the clerk for signature. If the summons is properly completed, the clerk shall sign and issue it to the plaintiff for service on the defendant.

803.5-3. *Service.* Within thirty (30) days after filing the summons and complaint with the Court, the plaintiff shall serve the summons and complaint upon the defendant in accordance with Rule 803.5-6. If the Tribe, or the officers, committees, commissions, boards, or any other department or division of the Tribe is a party, the plaintiff shall also serve notice to the Tribe's Secretary's Office within thirty (30) days.

(a) An additional thirty (30) days to serve the defendant may be requested and shall be in writing. The request may be granted by the Court upon a showing of good cause. The granting of this request is within the discretion of the Court.

(b) Proof of service shall be delivered, by the plaintiff, to the Court within ten (10) days of service upon the defendant. Proof of service shall be in accordance with Rule 803.5-6.

(c) If proof of service is not completed and/or delivered to the Court within thirty (30) days, or sixty (60) days if an extension is granted, then the Court shall, after notice to the plaintiff, dismiss the matter without a hearing. Such dismissal based on a failure to timely serve shall be without prejudice.

803.5-4. *When Service Required.* Unless this Law or other Tribal Law provides otherwise, the filing party shall serve each of the following papers on every party:

- (a) An order that specifically states that service is required;
- (b) A pleading filed after the original complaint including, but not limited to: counterclaims, crossclaims, and third-party claims;
- (c) A discovery paper required to be served on a party, unless the Court orders otherwise;
- (d) A written motion; and
- (e) A written notice, appearance, demand, or offer of judgment or any similar paper.

803.5-5. *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party shall be served on that party according to this Law.

803.5-6. *Effective Service.* Excluding the complaint, summons and answer, a party may serve

any other papers by electronic means if the party being served consents in writing to service by electronic means. Such consent shall include the electronic communication system, including the address or number, in which to send such papers. The Consent shall be filed with the Court. Otherwise, service shall be as follows: When possible, service shall be done by personal service as described below. If personal service is not possible, then by mail service. If mail service is not possible, then upon a showing of due diligence to make personal service and service by mail, service by publication may be used as a last resort.

(a) *Personal Service.* Personal service shall consist of delivering to the party a copy of the paper being served by a law enforcement officer or other person, who is not a party to the action and who is at least eighteen (18) years of age. An affidavit of service shall be filed with the Court as proof of service. Personal service shall be completed by hand delivering the required papers to any of the following:

- (1) The party named in the action or proceeding;
- (2) An individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(b) *Mail Service.* Service of all papers made by mail from any party shall be by certified mail, with return receipt. However, the Court may provide service by first class mail. The certified mail return receipt shall be filed with the Court as proof of service. The return receipt shall be signed by:

- (1) The party named in the action or proceeding;
- (2) an individual residing at the party's home or usual place of abode, so long as the person signing for delivery is at least eighteen (18) years of age;
- (3) An officer, manager, agent, or partner of a non-individual party; or
- (4) An attorney or advocate of the party, if represented.

(c) *Service by Publication.* When the other party's whereabouts are unknown and cannot be found after diligent effort, service may be completed by publication. The publication shall be in the Tribal newspaper or in a newspaper of general circulation in the area of the party's last known address, and shall be designated as "Legal Notice." This notice shall be published at least two (2) times within a thirty (30) day period. The two (2) notices shall be published at least ten (10) days before the hearing. Copies of the two (2) published notices and an affidavit of service stating the facts surrounding the failure of personal and mail service shall be filed with the Court as proof of service.

- (1) The Court may, on its own, order different time limits for service by publication.

(d) *Service Refused.* If a party being personally served refuses service, service shall be deemed completed if the person serving the papers does all of the following:

- (1) Informs the party of the purpose of the service;
- (2) Offers copies of the papers served;
- (3) Leaves a copy of the papers where convenient; and
- (4) Notes upon a copy of the papers to be filed with the Court or in an affidavit of service, the time, date, and place of the attempted service, that refusal occurred and where the papers were left.

(e) *Admission of Service.* A plaintiff may request any defendant to admit service of a complaint and a summons. The request shall:

- (1) Be in writing;
- (2) Name the defendant;

- (3) Name the Court;
- (4) Include a copy of the complaint and summons, two (2) admission of service forms clearly identifying the requirement that the signature by the defendant must be notarized, and a prepaid means for returning one (1) signed admission of service form;
- (5) Inform the defendant of the consequences of admitting and not admitting service;
- (6) State the date the request is sent;
- (7) Give the party a reasonable time of at least thirty (30) days after the request was sent to return the admission of service; and
- (8) Be delivered in person or by certified mail.

(f) *Consequences of Admission of Service.*

- (1) When the plaintiff files an admission of service signed by the defendant, proof of service as otherwise required in this section shall not be required and this Law shall apply as if a complaint and summons had been served at the time of filing the admission of service.
- (2) If a defendant timely returns an admission of service, the defendant shall have sixty (60) days, from the time the request was sent, to serve an answer to the complaint.
- (3) Signing and admission of service of a summons and complaint shall not waive any objection to personal jurisdiction or to venue.

(g) *Admission of Service other Papers.* A party may request an opposing party to admit service of any other papers required to be served. Such request shall follow the requirements of this section for admitting service except that under (e)(4) above, a copy of the papers subject to the request shall be included and not a copy of the complaint or summons.

803.5-7. *Filing.* Any paper after the complaint that is required to be served, including proof of service, shall be filed with the Court within a reasonable time after service.

(a) *How Filing is Made.* A paper is filed by any of the following:

- (1) Delivering it to the clerk.
- (2) Certified mail.
  - (A) If a filing is made by certified mail with return receipt but is untimely and the filing party can show that the mailing occurred at least three (3) days prior to the due date, the Court may accept the filing as timely.
- (3) Electronic Filing. A party may file papers electronically to the electronic address or number, designated for such filings, of the Clerk. A paper filed by electronic means shall constitute a written paper for the purpose of applying this Law. Upon receipt by the Clerk, any paper filed electronically shall be deemed filed, signed and verified by the filing party. A party filing electronically shall have three (3) business days from the day of filing to pay any filing fees associated with such filings.

(b) *Acceptance by the Clerk.* The clerk may refuse to accept any documents submitted for filing where other requirements of this Law or other Tribal laws have not been met including, but not limited to, lack of filing fee or unsigned pleadings. Filing parties shall be responsible for verifying acceptance of their filings with the clerk.

**803.6. Computing and Extending Time**

803.6-1. *Computing Time.* The following Rules apply in computing any time period specified in

this Law.

- (a) *Time Period Stated in Days.* When a time period is stated in days:
  - (1) The day that the period begins shall not be counted and the last day of the period shall be counted;
    - (A) In computing calendar days, time computation shall include Saturdays, Sundays and Tribal holidays
    - (B) In computing business days, Saturdays, Sundays or Tribal holidays shall not be counted.; and
  - (2) If the last day of the period falls on a Saturday, Sunday or Tribal holiday, the period shall be extended to the next day that is not a Saturday, Sunday or Tribal holiday.
  - (3) If the Clerks' office is inaccessible during part or all of the last day for filing, then the time for filing shall be extended to the first accessible day that is not a Saturday, Sunday or Tribal Holiday.
- (b) "*Last Day.*" Unless a different time is set by a Tribal Law or Court order, the last day ends for filing papers with the Judiciary at the close of business on the due date.

**803.6-2. *Extending Time.***

- (a) When an act may or shall be done within a specified time, the Judge presiding over the matter may, for good cause, extend time:
  - (1) On its own motion or the motion of any party, with or without notice, if made before the original time or its extension expires; or
  - (2) On motion made after the time has expired if the party failed to act because of excusable neglect.
- (b) *Extension of Time for Mail Service:*
  - (1) Whenever a party may or shall act within a specified time after service and service is made by mail, three (3) days shall be added after the period would otherwise expire.
- (c) Except where otherwise specified by Law, extensions shall not be granted ex parte.

**803.7. Pleadings; Form of Pleadings, Motions and Other Papers; Procedure**

803.7-1. *General Rules for Pleading.* All pleadings shall be liberally construed by the Court to preserve and promote justice for all parties.

803.7-2. *Pleadings.* Only these pleadings are allowed:

- (a) A complaint;
- (b) An answer to a complaint;
- (c) An answer to a counterclaim designated as a counter claim;
- (d) An answer to a crossclaim;
- (e) A third-party complaint;
- (f) An answer to a third-party complaint; and
- (g) If the Court orders one, a reply to an answer.

803.7-3. *Form of Pleadings.* The Rules governing captions and other matters of form in pleadings apply to motions and other papers.

- (a) *Claim for Relief.* A pleading that states a claim for relief shall be a short, clear and plainly written statement specifying the following:
  - (1) The basis upon which the Court has both subject matter jurisdiction over the matter, and personal jurisdiction over the parties;
  - (2) The events upon which the claims are based and the grounds upon which relief is sought; and

- (3) A demand for a judgment granting the relief that is sought and which the plaintiff considers to be just. Multiple forms of relief may be sought in the alternative or hypothetical form and need not be consistent.
- (b) *Defenses; Admissions and Denials.*
- (1) In responding to a pleading, a party shall:
- (A) State in short and plain terms its defenses to each claim asserted against it; and
- (B) Admit or deny the allegations asserted against it by an opposing party.
- (2) *Denials.* A denial shall fairly respond to the substance of the allegation.
- (3) *General and Specific Denials.* A party that intends in good faith to deny all the allegations of a pleading, including the jurisdictional grounds, may do so by a general denial. A party that does not intend to deny all the allegations shall either specifically deny designated allegations or generally deny all except those specifically admitted.
- (4) *Denying Part of an Allegation.* A party that intends in good faith to deny only part of an allegation shall admit the part that is true and deny the rest.
- (5) *Lacking Knowledge or Information.* A party that lacks knowledge or information sufficient to form a belief about the truth of an allegation shall so state, and the statement has the effect of a denial.
- (6) *Effect of Failing to Deny.* An allegation, other than an allegation relating to the amount of damages, is admitted if a responsive pleading is required and the allegation is not denied. If a responsive pleading is not required, an allegation shall be denied or avoided.
- (c) *Affirmative Defenses.* Responding to a pleading, a party shall affirmatively state any avoidance or affirmative defense, including:
- (1) accord and satisfaction;
  - (2) arbitration and award;
  - (3) assumption of risk;
  - (4) contributory negligence;
  - (5) duress;
  - (6) estoppel;
  - (7) failure of consideration;
  - (8) fraud;
  - (9) illegality;
  - (10) injury by fellow servant;
  - (11) laches;
  - (12) license;
  - (13) payment;
  - (14) release;
  - (15) res judicata;
  - (16) statute of frauds;
  - (17) statute of limitations; and
  - (18) Waiver.
- (d) *Mistaken Designation.* If a party mistakenly designates a defense as a counterclaim, or a counterclaim as a defense, the Court shall, if justice requires, treat the pleading as though it were correctly designated, and may impose terms for doing so.
- (e) *Caption.* Every pleading shall contain a caption heading with the name of the Court, the title of the action, the trial docket number (if known) and a designation as to what

kind of pleading it is.

(1) The title of the complaint shall name all the names of the parties, mailing address, phone number and agent or other contact person, if known.

(2) The name of the first party on each side may be used in all pleadings except the initial complaint, which shall include all litigants.

(3) In the interest of judicial efficiency, the Court may amend a caption heading at any time to accurately identify the parties to the action.

(f) *Paragraphs.* All statements of the complaint and answer shall be set forth in separate numbered paragraphs which shall be limited, as close as practicable, to a single occurrence, event, circumstance or issue.

(g) *References and Exhibits.* Pleadings may adopt, by reference, any statements elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit or attachment is a part of the pleading for all purposes. References shall be clear and specific to a particular document or other piece of evidence.

(h) *Paper.* Where possible, all papers filed with the Court shall be on letter sized paper (8.5 x 11), typed with 1.5 line spacing, and have at least a one inch (1") margin on all sides.

(i) *Copies Submitted.* Parties filing papers with the Court shall include one original and one (1) copy for use by the Court.

(1) Parties shall serve one (1) copy of said papers to the opposing party or if represented, to opposing party's attorney or advocate.

(2) Failure to supply sufficient copies to the Court may result in a copy fee assigned to the filing party.

803.7-4. *Form of Motion.* A request for a Court order shall be made by motion. The motion shall:

(a) Be in writing unless made during a hearing or trial;

(b) State with particularity the grounds for seeking the order; and

(c) State the relief sought.

803.7-5. *Procedure.* All parties filing any motion for consideration by the Court shall serve such motion at least fourteen (14) days prior to the hearing and shall adhere to the following procedure, except where the Court determines that the application of the time limits would be impractical in an individual case:

(a) The moving party shall submit the motion to the Court, with proof of service.

(b) From the date that the motion is filed with the Court, the opposing party shall have fourteen (14) days to file with the Court and serve on any opposing party, a written response to the motion.

(c) Non-substantive procedural motions, such as a motion for extension, motion to submit additional pages, notice of representation, etc. may be granted or denied immediately by the Court and without a response from the opposing party.

(d) Motions filed with the Court less than fourteen (14) days prior to a hearing may be considered at or before the hearing, if justice so requires. An opportunity shall be given to the non-moving party to respond verbally or in writing to the motion at or before the hearing.

803.7-6. *Supporting Affidavits.* Any affidavit supporting a motion shall be served with the motion. Any opposing affidavit shall be served at least seven (7) days before the hearing, unless the Court permits service at another time.

### **803.8. Signing Pleadings, Motions, and Other Papers; Representations to the Court;**

## Sanctions

803.8-1. *Signature.* Every pleading, motion or other paper shall be signed by the party or the party's attorney or advocate, if represented by an attorney or advocate. Every pleading, motion or other paper shall state the signer's address and telephone number.

(a) The Court shall strike an unsigned paper unless the omission is promptly corrected within a reasonable period of time after being called to the attorney's, advocate's or party's attention.

(b) A pleading need not be verified or accompanied by an affidavit.

803.8-2. *Representations to the Court.* By presenting to the Court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it, an attorney, advocate or unrepresented party certifies that to the best of the person's knowledge, information, and belief formed after an inquiry reasonable under the circumstances that:

(a) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(b) The claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying or reversing existing law or for establishing new law;

(c) The factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(d) The denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

803.8-3. *Sanctions.*

(a) *In General.* If, after notice and a reasonable opportunity to respond, the Court determines that Rule 803.8-2 has been violated, the Court may impose an appropriate sanction on any attorney, law firm, advocate, or party that violated the Rule or is responsible for the violation. Absent exceptional circumstances, a law firm shall be held jointly responsible for a violation committed by its partner, associate, or employee.

(b) *Motion for Sanctions.* A motion for sanctions shall be made separately from any other motion and shall describe the specific conduct that allegedly violates Rule 803.8-2. The motion shall be served under Rule 803.5-6, but it shall not be filed or be presented to the Court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within twenty-one (21) days after service or within another time the Court sets. If warranted, the Court may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(c) *On the Court's Initiative.* On its own, the Court may order an attorney, law firm, advocate, or party to show cause why the representations to the Court have not violated Rule 803.8-2.

(d) *Nature of a Sanction.* A sanction imposed under this Rule shall be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated. The sanction may include nonmonetary directives; an order to pay a penalty into the Court; or if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of part or all of the reasonable attorney's fees and other expenses directly resulting from the violation.

(e) *Limitations on Monetary Sanctions.* The Court shall not impose a monetary sanction:

(1) Against a represented party for violating Rule 803.8-2; or

(2) On its own, unless a party failed to show cause under Rule 803.8-3(c).

(f) *Requirements for an Order.* An order imposing a sanction shall describe the

sanctioned conduct and explain the basis for the sanction.

803.8-4. *Inapplicability to Discovery.* This Rule, 803.8, shall not apply to disclosures, requests, responses, objections and motions made during discovery under Rules 803.14 through 803.20.

**803.9 Defenses and Objections: When and How Presented; Motion for Judgment on the Pleadings; Consolidated Motions; Waiving Defenses; Pretrial Hearing**

803.9-1. *Time to Serve a Responsive Pleading.*

(a) *In General.* Except as otherwise provided by this Law or other Tribal Law, the time for serving a responsive pleading is as follows:

(1) A party shall serve an answer to a complaint, counterclaim, crossclaim or third-party claim within twenty (20) days after being served with the pleading that states the complaint, counterclaim, crossclaim or third-party claim.

(2) A party shall serve a reply to an answer within twenty (20) days after being served with an order to reply, unless the order specifies a different time.

(3) A party may answer or reply orally at a hearing with the Court's permission.

(b) *Effect of a Motion.* Unless the Court sets a different time, serving a motion under this Rule alters these periods as follows:

(1) If the Court denies the motion or postpones its disposition until trial, the responsive pleading shall be served within fourteen (14) days after notice of the Court's action; or

(2) If the Court grants a motion for a more definite statement, the responsive pleading shall be served within fourteen (14) days after the more definite statement is served.

803.9-2. *How to Present Defenses.*

(a) Every defense to a claim for relief in any pleading shall be asserted in the responsive pleading if one is required, except those listed below. If a responsive pleading is not required, any defense may be asserted at hearing. A party may assert the following defenses by motion:

(1) Lack of subject-matter jurisdiction;

(2) Lack of personal jurisdiction;

(3) Improper venue;

(4) Insufficient process;

(5) Insufficient service of process;

(6) Failure to state a claim upon which relief can be granted; and

(7) Failure to join a party.

(b) A motion asserting any of these defenses shall be made before pleading if a responsive pleading is required. If a pleading sets out a claim for relief that does not require a responsive pleading, an opposing party may assert at trial any defense to that claim. No defense or objection is waived by joining it with one (1) or more other defenses or objections in a responsive pleading or in a motion.

803.9-3. *Motion for Judgment on the Pleadings.* Pleadings are closed when every pleading asserting a claim, counter-claim or crossclaim has been answered. After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings.

803.9-4. *Result of Presenting Matters Outside the Pleadings.* If, on a motion under Rule 803.9-2(a)(6) or 803.9-3, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment. All parties shall be given a reasonable opportunity to present all the material that is pertinent to the motion.

803.9-5. *Motion for a More Definite Statement.* A party may move for a more definite

statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that the party cannot reasonably prepare a response. The motion shall be made before filing a responsive pleading and shall point out the defects complained of and the details desired. If the Court orders a more definite statement and the order is not obeyed within fourteen (14) days after notice of the order or within the time the Court sets, the Court may strike the pleading or issue any other appropriate order.

803.9-6. *Motion to Strike.* The Court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Court may act:

- (a) On its own; or
- (b) On motion made by a party either before responding to the pleading or, if a response is not allowed, within twenty-one (21) days after being served with the pleading.

803.9-7. *Joining Motions.*

- (a) *Right to Join.* A motion under this section may be joined with any other motion allowed by this section.
- (b) *Limitation on Further Motions.* Except as required in Rule 803.9-8(b) or (c), a party that makes a motion under Rule 803.9-2(a) shall not make another motion under Rule 803.9-2(a) raising a defense or objection that was available to the party but omitted from its earlier motion.

803.9-8. *Waiving and Preserving Certain Defenses.*

(a) *When Some Are Waived.* A party waives any defense listed in Rule 803.9-2(a)(2)–(5) by:

- (1) Omitting it from a motion in the circumstances described in Rule 803.9-7(b); or
- (2) Failing to either:
  - (A) Make it by motion under this Rule; or
  - (B) Include it in a responsive pleading or in an amendment allowed by Rule 803.11-1 as a matter of course.

(b) *When to Raise Others.* The following may be raised in any pleading, by motion, or at trial:

- (1) Failure to state a claim upon which relief can be granted;
- (2) Failure to join a necessary party; and/or
- (3) Failure to state a legal defense to a claim.

(c) *Lack of Subject-Matter Jurisdiction.* If the Court determines at any time that it lacks subject-matter jurisdiction, the Court shall dismiss the action.

803.9-9. *Hearing Before Trial.* Upon the motion of any party, the Court may hear and decide the following prior to trial, unless the Court orders a deferral until trial:

- (a) any defense listed in Rule 803.9-2(a), or
- (b) a motion for judgment on the pleadings.

### **803.10. Counterclaim; Crossclaim; Third-Party Claim;**

803.10-1. *Counterclaim.*

(a) A party against whom a claim has been made may assert a claim against the opposing party if the claim:

- (1) Arises out of the same transaction or occurrence that is the subject-matter of the opposing party's claim; and
- (2) Does not require adding another party over whom the Court cannot acquire jurisdiction.

(b) *Exception.* The pleader may not assert the claim if the claim is subject to another

pending action.

(c) *Relief*. A counterclaim need not diminish or defeat the recovery sought by the opposing party. It may request relief that exceeds in amount or differs in kind from the relief sought by the opposing party.

803.10-2. *Crossclaim*. A party against whom a claim is made may assert a claim against a co-party if the claim arises out of the same transaction or occurrence that is the subject-matter of the original action or of a counterclaim.

803.10-3. *Third-Party Claim*. A party against whom a claim is made may assert against a third-party any claim arising out of the same transaction or occurrence, alleging that the third-party is liable for part or the entire claim of the opposing party. A party asserting a third-party claim shall, by motion, obtain the Court's leave if it files the third-party claim more than fourteen (14) days after serving its original answer. If any person or entity believes it should be included in a case, it may motion the Court to be joined as a third-party.

### **803.11. Amended Pleadings**

803.11-1. *Amendments Before Trial*. A party may amend any pleading once within ten (10) days of the original filing, unless an answer has already been filed. If an answer has been filed, any amendments may only be made with the opposing party's written consent or with the Court's permission. The Court shall freely give permission when justice so requires.

(a) Unless the Court orders otherwise, any required response to an amended pleading shall be made within the time remaining to respond to the original pleading or within fourteen (14) days after service of the amended pleading, whichever is later.

803.11-2. *Amendments During and After Trial*.

(a) *Based on an Objection at Trial*. If, at trial, a party objects that evidence is not within the issues raised in the pleadings, the Court may permit the pleadings to be amended. The Court should freely permit an amendment when doing so will aid in presenting the merits and the objecting party fails to satisfy the Court that the evidence would prejudice that party's action or defense on the merits. The Court may grant a continuance to enable the objecting party to provide evidence to satisfy the Court that the evidence would prejudice their action or defense on the merits.

(b) *For Issues Tried by Consent*. When an issue not raised by the pleadings is tried by the parties' express or implied consent, it shall be treated in all respects as if raised in the pleadings. A party may move—at any time, even after judgment—to amend the pleadings to conform to the evidence and to raise an unpleaded issue. However, failure to amend shall not affect the outcome of that issue.

### **803.12. Pretrial Meeting and Filing**

803.12-1. *Purposes of a Pretrial Meeting*.

(a) Upon written request of either party or the Court's own initiative, a pretrial meeting shall be scheduled directing the attorneys or advocates and any unrepresented parties to appear, for such purposes as:

- (1) Expediting disposition of the action;
- (2) Establishing early and continuing control so that the case will not be protracted because of lack of management;
- (3) Discouraging wasteful pretrial activities;
- (4) Improving the quality of the trial through more thorough preparation, including a discovery plan. A discovery plan shall state the parties' views and proposals on:

- (A) what changes should be made in the timing, form, or requirement for disclosures under Rules 803.14-2 and 803.14-5, including a statement of when initial disclosures were made or will be made;
- (B) the subjects on which discovery may be needed, when discovery should be completed, and whether discovery should be conducted in phases or be limited to or focused on particular issues;
- (C) any issues about disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;
- (D) any issues about claims of privilege or of protection as trial-preparation materials, including—if the parties agree on a procedure to assert these claims after production— whether to ask the Court to include their agreement in an order;
- (E) what changes should be made in the limitations on discovery imposed under this Law or by local rule, and what other limitations should be imposed; and
- (F) any other orders that the Court should issue under Rule 803.14-6 or under Rules 803.12-1(c) and (e); and

(5) Facilitating settlement.

- (A) If the parties request or agree to participate in peacemaking or mediation, the trial proceedings may be stayed up to forty-five (45) days in order for the parties to work towards reaching an acceptable solution. The Court shall appoint a peacemaker or mediator when necessary.
- (B) If the parties are close to a resolution, but need more time, they may move the Court for an extension of the stay. The extension shall not exceed an additional thirty (30) days.

(b) *Parties' Responsibility.* In conferring, the parties shall consider the nature and basis of their claims and defenses and the possibilities for promptly settling or resolving the case; make or arrange for the disclosures required by Rules 803.14-2 and 803.14-5; discuss any issues about preserving discoverable information; develop a proposed discovery plan; and prepare a pretrial statement.

(1) The attorneys or advocates of record and all unrepresented parties that have appeared in the case shall be jointly responsible for arranging the meeting, for attempting in good faith to agree on the proposed discovery plan, preparing the pretrial statement, and for submitting to the Court within fourteen (14) days after the meeting a written report outlining the plan and the pretrial statement. The Court may order the parties, advocates or attorneys to attend the meeting in person. The pretrial statement shall contain the following:

- (A) The uncontested facts deemed material;
- (B) The uncontested issues of fact and law as the attorneys or advocates or unrepresented parties can agree are material or applicable;
- (C) A separate statement by each party of other issues of fact or law which that party believes material;
- (D) A list of the witnesses intended to be used by each party during the trial, other than those intended to be used solely for impeachment. No witnesses shall be used at the trial other than those listed, except to prevent injustice; and
- (E) A list of the exhibits which each party intends to use at trial, other than those intended to be used solely for impeachment, specifying

exhibits which the parties agree are admissible at trial. No exhibits shall be used during the trial other than those listed, except to prevent injustice.

(c) During pretrial meetings, the Court may take appropriate action including, but not limited to:

- (1) Any matters which will aid in the simplification, clarification, settlement or disposition of the case;
- (2) Additional or deleted procedures to be followed at the hearing;
- (3) Settlement discussions;
- (4) The necessity or desirability of amending the pleadings;
- (5) The appropriateness and timing of a summary judgment;
- (6) The control and scheduling of discovery;
- (7) The identification of witnesses and documents, the need and schedule for filing and exchanging of pretrial briefs, the dates for further pretrial meetings and trial;
- (8) The disposition of pending motions;
- (9) The need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems;
- (10) Obtaining admissions and stipulations about facts and documents to avoid unnecessary proof, and ruling in advance on the admissibility of evidence; and
- (11) Facilitating in other ways the just, speedy and inexpensive disposition of the action.

(d) Unless the Court orders otherwise, one (1) pretrial meeting shall be scheduled at least twenty-one (21) days prior to a formal hearing.

(1) Subsequent pretrial meetings may be scheduled at any time before trial, provided that, at least one (1) has taken place earlier than twenty-one (21) days before a formal hearing or other time set by the Court.

(2) The Court may, in its discretion, forgo pretrial meetings under this Rule.

(e) Scheduling Order. The Court shall issue a scheduling order as soon as practicable, but in any event within the earlier of sixty (60) days after any defendant has been served with the complaint or forty-five (45) days after any defendant has appeared. The scheduling order shall limit the time to join other parties, amend the pleadings, complete discovery and file motions. A schedule may be modified only for good cause and with the Court's consent. The scheduling order may include, but is not limited to:

- (1) modifying the timing of disclosures under Rules 803.14-2 and 803.14-5;
- (2) modifying the extent of discovery;
- (3) providing for disclosure or discovery of electronically stored information;
- (4) any agreements the parties reach for asserting claims of privilege or of protection as trial preparation material after information is produced;
- (5) setting dates for pretrial meetings and for trial; and
- (6) other appropriate matters.

#### 803.12-2. *Pretrial Filing Procedure*

(a) *Submission of Documents.* Parties shall submit all documents including, but not limited to, proposed exhibits and other evidence (or copies) that a party plans to use at trial for the Court to review not less than two (2) days prior to a scheduled hearing.

(1) Documents submitted after this time or at the time of the hearing shall only be admitted if the Court determined that:

- (A) The documentation has a direct impact upon the outcome of the hearing;
- (B) Is admissible under this Law or the Rules of Evidence; and
- (C) Good cause is shown as to why the submission is untimely.

803.12-3. *Pretrial Orders.* After any meeting under this Rule, the Court shall issue an order reciting the action taken. This order controls the course of the action unless the Court modifies it.

803.12-4. *Final Pretrial Meeting and Orders.* The Court may hold a final pretrial meeting to formulate a trial plan, including a plan to facilitate the admission of evidence. The meeting shall be held as close to the start of trial as is reasonable, and shall be attended by at least one (1) attorney or advocate who shall conduct the trial for each party and by any unrepresented party. The Court may modify the order issued after a final pretrial meeting only to prevent manifest injustice.

803.12-5. *Sanctions.*

(a) *In General.* On motion or on its own, the Court may issue any just orders, including those authorized by Rule 803.20-2(b)(1), if a party or its attorney or advocate:

- (1) Fails to appear at a scheduling or other pretrial meeting;
- (2) Is substantially unprepared to participate—or does not participate in good faith—in the meeting; or
- (3) Fails to obey a scheduling or other pretrial order.

(b) *Imposing Fees and Costs.* Instead of or in addition to any other sanction, the Court shall order the party, its attorney or advocate, or all to pay the reasonable expenses—including attorney’s fees—incurred because of any noncompliance with this Rule, unless the noncompliance was substantially justified or other circumstances make an award of expenses unjust.

### **803.13. Substitution of Parties**

803.13-1. *Death of a Party.*

(a) *Substitution if the Claim Is Not Extinguished.* If a party dies and the claim is not extinguished, the Court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent’s successor or representative. If the motion is not made within ninety (90) days after service, to the Court and all other parties, of a statement noting the death, the action by or against the decedent shall be dismissed.

(b) *Continuation Among the Remaining Parties.* After a party’s death, if the right sought to be enforced survives only to or against the remaining parties, the action shall not abate, but proceeds in favor of or against the remaining parties. The death shall be noted on the record.

(c) *Service.* A motion to substitute, together with a notice of hearing, shall be served on the parties. A statement noting death shall be served in the same manner.

803.13-2. *Incompetency.* If a party becomes incompetent, the Court may, on its own or on motion, permit the action to be continued by or against the party’s representative.

803.13-3. *Transfer of Interest.* If an interest is transferred, the action may be continued by or against the original party unless the Court, on motion, orders the transferee to be substituted in the action or joined with the original party.

### **803.14. Discovery**

803.14-1. *Scope.* Unless otherwise limited by Court order, the scope of discovery is as follows:

- (a) Parties may obtain discovery regarding any nonprivileged matter that is relevant to

any party's claim or defense—including the existence, description, nature, custody, condition, and location of any documents or other tangible things and the identity and location of persons who know of any discoverable matter.

(b) For good cause, the Court may order discovery of any matter relevant to the subject matter involved in the action. Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. All discovery is subject to the limitations imposed by Rule 803.14-3.

803.14-2. *Required Disclosures.* A party shall, without awaiting a discovery request, provide to the other parties:

(a) The name and, if known, the address and telephone number of each individual likely to have discoverable information along with the subjects of that information that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;

(b) A copy or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

(c) A computation of each category of damages claimed by the disclosing party;

(d) For inspection and copying as under Rule 803.17, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment.

(e) *Exceptions.* Required disclosures under this section may be excused, at the Courts discretion, in a Family Court case.

803.14-3. *Limitations.* On motion or on its own, the Court shall limit the frequency or extent of discovery otherwise allowed by this Law if it determines that:

(a) The discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive; or

(b) The party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(c) The burden or expense of the proposed discovery outweighs its likely benefit, considering the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the action, and the importance of the discovery in resolving the issues.

803.14-4. *Time for Required Disclosures.* A party shall make the required disclosures at the parties' Rule 803.12 pretrial meeting unless a different time is set by the Court.

803.14-5. *Required Pretrial Disclosures.*

(a) In addition to the disclosures required by Rule 803.14-2, a party shall provide to the other parties and promptly file the following information about the evidence that it may present at trial other than solely for impeachment:

(1) the name and, if not previously provided, the address and telephone number of each witness—separately identifying those the party expects to present and those it may call if the need arises;

(2) the designation of those witnesses whose testimony the party expects to present by deposition and, if not taken stenographically, a transcript of the pertinent parts of the deposition; and

(3) an identification of each document or other exhibit, including summaries of other evidence—separately identifying those items the party expects to offer and those it may offer if the need arises.

- (b) *Time for Required Pretrial Disclosures; Objections.* Unless the Court orders otherwise, these disclosures shall be made at least 30 (thirty) days before trial. Within fourteen (14) days after they are made, unless the Court sets a different time, a party may serve and promptly file a list of the following objections: any objections to the use of a deposition designated by another party under Rule 803.14-5(a)(2) and any objection, together with the grounds for it, that may be made to the admissibility of materials identified under Rule 803.14-5(a)(3). An objection not so made—except for one under Oneida Judiciary Rules of Evidence, Rules 155.7-2 or 155.7-3—is waived unless excused by the Court for good cause.

803.14-6. *Protective Order.* A party or any person or entity from which discovery is sought may move for a protective order from the Court. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the other parties, persons or entities in an effort to resolve the issue without Court action. The Court may issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one (1) or more of the following:

- (a) Forbidding the disclosure or discovery;
- (b) Specifying terms, including time and place, for the disclosure or discovery;
- (c) Prescribing a discovery method other than the one selected by the party seeking discovery;
- (d) Forbidding inquiry into certain matters, or limiting the scope of disclosure, or discovery to certain matters;
- (e) Designating the persons who may be present while the discovery is conducted;
- (f) Requiring that a deposition be sealed and opened only on Court order;
- (g) Requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the Court directs;
- (h) Redacting sensitive documents; or
- (i) Any other order necessary to ensure discovery is conducted fairly.

803.14-7. *Supplementing Disclosures and Responses.* A party or person who has made a disclosure or who has responded to an interrogatory, request for production, or request for admission, shall supplement or correct its disclosure or response:

- (a) In a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or
- (b) As ordered by the Court.

803.14-8. *Signature Required; Effect of Signature.*

(a) Every disclosure under Rule 803.14-2 and 803.14-5 and every discovery request, response, or objection shall be signed by at least one (1) attorney or advocate of record in the attorney's or advocate's own name—or by the party personally, if unrepresented—and shall state the signer's address and telephone number. By signing, an attorney, advocate or party certifies that to the best of the person's knowledge, information, and belief formed after a reasonable inquiry that:

- (1) With respect to a disclosure, it is complete and correct as of the time it is made; and
- (2) With respect to a discovery request, response, or objection, it is:
  - (A) Consistent with this Law and warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law, or for establishing new law;

(B) Not used for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; and

(C) Neither unreasonable nor unduly burdensome or expensive, considering the needs of the case, prior discovery in the case, the amount in controversy, and the importance of the issues at stake in the action.

(b) *Failure to Sign.* Other parties have no duty to act on an unsigned disclosure, request, response, or objection until it is signed, and the Court shall strike it unless a signature is promptly supplied after the omission is called to the attorney's, advocate's or party's attention.

803.14-9. *Failure to Disclose.* If a party fails to respond or appear for discovery under this Rule, the opposing party may move for an order to compel the defaulting party to perform. The Court may award costs to the non-defaulting party.

(a) If a party fails to perform after being ordered to do so by the Court, the Court may order any sanction under Rule 803.20-2(b)(1).

803.14-10. *Information Produced.* If information produced in discovery is subject to a claim of privilege or of protection as trial-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party:

(a) Shall promptly return, sequester, or destroy the specified information and any copies it has;

(b) Shall not use or disclose the information until the claim is resolved;

(c) Shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and

(d) May promptly present the information to the Court under seal for a determination of the claim. The producing party shall preserve the information until the claim is resolved.

### **803.15. Depositions**

803.15-1. *Generally.* All depositions shall be taken under oath or under penalty of perjury before a person authorized to administer oaths or a person appointed by the Court to administer oaths and take testimony.

(a) *When a Deposition May Be Taken.* A party may, by oral and/or written questions, depose any person, including a party, at any time if consented to orally or in writing by such person being deposed, or during the time set during the pretrial meeting under Rule 803.12-1(a).

(b) *Notice.* A party who wants to depose a person shall give reasonable written notice to every other party. The notice shall state the time and place of the deposition and, if known, the deponent's name and address.

(1) Not less than ten (10) days' notice shall be given, if deposing an adverse party or non-party witness.

(c) *Service; Required Notice.*

(1) A party who wants to depose a person by written questions shall serve such questions on every other party.

(2) Any questions to the deponent from other parties shall be served on all parties as follows: cross-questions, within seven (7) days after being served with the notice and direct questions; redirect questions, within seven (7) days after being served with cross-questions; and recross-questions, within seven (7) days after being served with redirect questions. The Court may, for good cause, extend or shorten these times.

(d) *Producing Documents.* If a subpoena requiring production of documents is to be

served on the deponent, the materials designated for production shall be listed in the notice or in an attachment.

(e) *Transcripts.* A transcript of the deposition shall be made and shall be available for use by the parties and the Court. The deposing party bears the cost of recording. Each party shall bear its own cost of obtaining transcripts.

(f) *Objections.* An objection at the time of the examination—whether to evidence, to a party’s conduct, to the manner of taking the deposition, or to any other aspect of the deposition—shall be noted on the record, but the examination shall still proceed; the testimony is taken subject to any objection. An objection shall be stated concisely in a nonargumentative and nonsuggestive manner. A person may instruct a deponent not to answer only when necessary to preserve a privilege or to enforce a limitation ordered by the Court.

(g) *Duration.* Unless otherwise stipulated or ordered by the Court, a deposition shall be limited to two (2) days, with questioning occurring for up to seven (7) hours per day.

803.15-2. *Sanction.* The Court may impose an appropriate sanction—including the reasonable expenses and attorney’s fees incurred by any party—on a person who impedes, delays, or frustrates the fair examination of the deponent.

803.15-3. *Motion to Terminate or Limit.*

(a) *Grounds.* At any time during a deposition, the deponent or a party may move to terminate or limit it on the ground that it is being conducted in bad faith or in a manner that unreasonably annoys, embarrasses, or oppresses the deponent or party. If the objecting deponent or party so demands, the deposition shall be suspended for the time necessary to obtain an order.

(b) *Order.* The Court may order that the deposition be terminated or may limit its scope and manner as provided in Rule 803.14-6. If terminated, the deposition may be resumed only by order of the Court.

## **803.16. Interrogatories**

803.16-1. *In General.*

(a) Unless otherwise stipulated or ordered by the Court, a party may serve on any other party no more than twenty-five (25) written interrogatories. Parties shall not evade this limitation through the device of joining as “subparts” questions that seek information about separate subjects. However, a question asking about communications of a particular type shall be treated as a single interrogatory even though it requests that the time, place, persons present, and contents be stated separately for each such communication. Leave to serve additional interrogatories may be granted to the extent consistent with Rule 803.14-3. (b) An interrogatory may relate to any matter that may be inquired into under Rule 803.14-1. An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the Court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial meeting or some other time.

803.16-2. *Answers and Objections.*

(a) *Responding Party.* The interrogatories shall be answered by the party to whom they are directed.

(b) *Time to Respond.* The responding party shall serve its answers and any objections within twenty (20) days after being served with the interrogatories. A shorter or longer time may be ordered by the Court.

(c) *Answering Each Interrogatory.* Each interrogatory shall, to the extent it is not

objected to, be answered separately and fully in writing under oath or penalty of perjury.

(d) *Objections.* The grounds for objecting to an interrogatory shall be stated with specificity. Any ground not stated in a timely objection is waived unless the Court, for good cause, excuses the failure.

(e) *Signature.* The person who makes the answers shall sign them, and the person who objects shall sign any objections.

### **803.17. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes**

803.17-1. *In General.* A party may serve on any other party a request within the scope of Rule 803.14:

(a) To produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(1) Any designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or

(2) Any designated tangible things.

(b) To permit entry onto designated land or other property possessed or controlled by the responding party, so that the requesting party or representative may inspect, measure, survey, photograph, record, test, or sample the property or any designated object or operation thereon.

803.17-2. *Procedure.*

(a) *Contents of the Request.* The request:

(1) Shall describe with reasonable particularity each item or category of items to be inspected;

(2) Shall specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(3) May specify the form or forms in which electronically stored information is to be produced.

(b) *Responses and Objections.*

(1) *Time to Respond.* The party to whom the request is directed shall respond in writing within ten (10) days after being served. A shorter or longer time may be ordered by the Court.

(2) *Responding to Each Item.* For each item or category, the response shall either state that inspection and related activities shall be permitted as requested or state an objection to the request, including the reasons.

(3) *Objections.* An objection to part of a request shall specify the part and permit inspection of the rest.

(4) *Responding to a Request for Production of Electronically Stored Information.* The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form—or if no form was specified in the request—the party shall state the form or forms it intends to use.

(5) *Producing the Documents or Electronically Stored Information.* Unless otherwise stipulated or ordered by the Court, these procedures apply to producing documents or electronically stored information:

(A) A party shall produce documents as they are kept in the usual course of business or shall organize and label them to correspond to the categories in the request;

(B) If a request does not specify a form for producing electronically stored information, a party shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(C) A party need not produce the same electronically stored information in more than one (1) form.

803.17-3. *Nonparties.* A nonparty may be compelled to produce documents and tangible things or to permit an inspection in accordance with this section.

### **803.18. Physical and Mental Examinations**

#### **803.18-1. Order for an Examination.**

(a) *In General.* The Court where the action is pending may order a party who's mental or physical condition—including blood group—is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. The Court has the same authority to order a party to produce for examination a person who is in its custody or under its legal control.

(b) *Motion and Notice; Contents of the Order.* The order:

(1) May be made only on motion for good cause and on notice to all parties and the person to be examined; and

(2) Shall, unless the Court orders otherwise, specify the time, place, manner, conditions, and scope of the examination, as well as the person or persons who shall perform it.

#### **803.18-2. Examiner's Report.**

(a) *Request by the Party or Person Examined.* The party who moved for the examination shall, on request, deliver to the requester a copy of the examiner's report, together with like reports of all earlier examinations of the same condition. The request may be made by the party against whom the examination order was issued or by the person examined.

(b) *Contents.* The examiner's report shall be in writing and shall set out in detail the examiner's findings, including diagnoses, conclusions, and the results of any tests.

(c) *Request by the Moving Party.* After delivering the reports, the party who moved for the examination may request—and is entitled to receive—from the party against whom the examination order was issued like reports of all earlier or later examinations of the same condition. But those reports need not be delivered by the party with custody or control of the person examined if the party shows that it could not obtain them.

(d) *Waiver of Privilege.* By requesting and obtaining the examiner's report, or by deposing the examiner, the party examined waives any privilege it may have—in that action or any other action involving the same controversy—concerning testimony about all examinations of the same condition.

(e) *Failure to Deliver a Report.* The Court on motion may order—on just terms—that a party deliver the report of an examination. If the report is not provided, the Court may exclude the examiner's testimony at trial.

(f) *Scope.* This section applies also to an examination made by the parties' agreement, unless the agreement states otherwise. This section shall not preclude obtaining an examiner's report or deposing an examiner under other Rules.

(g) *Exception.* The Court may, in its discretion, limit or amend the requirements under

this section.

803.18-3. *Cost of Examination.* The requesting party shall be responsible for the costs of an examination, unless the Court orders otherwise.

### **803.19. Requests for Admission**

803.19-1. *Scope and Procedure.*

(a) *Scope.* A party may serve on any other party a written request to admit, for purposes of the pending action only, the truth of any matters within the scope of Rule 803.14-1 relating to:

- (1) Facts, the application of law to fact, or opinions about either; and
- (2) The genuineness of any described documents.

(b) *Time to Respond; Effect of Not Responding.* A matter is admitted unless, within ten (10) days after being served, the party to whom the request is directed serves on the requesting party a written answer or objection addressed to the matter and signed by the party under oath or penalty of perjury. A shorter or longer time for responding may be ordered by the Court.

(c) *Answer.* If a matter is not admitted, the answer shall specifically deny it or state in detail why the answering party cannot truthfully admit or deny it. A denial shall fairly respond to the substance of the matter; and when good faith requires that a party qualify an answer or deny only a part of a matter, the answer shall specify the part admitted and qualify or deny the rest. The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.

(d) *Objections.* The grounds for objecting to a request shall be stated. A party shall not object solely on the ground that the request presents a genuine issue for trial.

(e) *Motion Regarding the Sufficiency of an Answer or Objection.* The requesting party may move to determine the sufficiency of an answer or objection. Unless the Court finds an objection justified, it shall order that an answer be served. On finding that an answer does not comply with this Rule, the Court may order either that the matter is admitted or that an amended answer be served. The Court may defer its final decision until a pretrial meeting or a specified time before trial. Rule 803.20-1(e) applies to an award of expenses.

803.19-2. *Effects of an Admission, Withdrawing or Amending it.* A matter admitted under this Rule shall be conclusively established unless the Court, on motion, permits the admission to be withdrawn or amended. The Court may permit withdrawal or amendment if it would promote the presentation of the merits of the action and if the Court is not persuaded that it would prejudice the requesting party in maintaining or defending the action on the merits. An admission under this Rule is not an admission for any other purpose and shall not be used against the party in any other proceeding.

### **803.20. Failure to Make Disclosures or to Cooperate in Discovery; Sanctions**

803.20-1. *Motion for an Order Compelling Disclosure or Discovery.*

(a) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion shall include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without Court action.

(b) *Appropriate Court.* A motion for an order to a party or nonparty shall be made in the

Court where the action is pending.

(c) *Specific Motions.*

(1) *To Compel Disclosure.* If a party fails to make a disclosure required by Rule 803.14-2 or 803.14-5, any other party may move to compel disclosure and for appropriate sanctions.

(2) *To Compel a Discovery Response.* A party seeking discovery may move for an order compelling an answer, designation, production, or inspection. This motion may be made if:

(A) A deponent fails to answer a question asked under Rule 803.15;

(B) A party fails to answer an interrogatory submitted under Rule 803.16;  
or

(C) A party fails to respond that inspection will be permitted—or fails to permit inspection—as requested under Rule 803.17.

(3) *Related to a Deposition.* When taking an oral deposition, the party asking a question may complete or adjourn the examination before moving for an order.

(d) *Evasive or Incomplete Disclosure, Answer, or Response.* For purposes of this section, an evasive or incomplete disclosure, answer, or response shall be treated as a failure to disclose, answer, or respond.

(e) *Payment of Expenses; Protective Orders.*

(1) *If the Motion Is Granted (or Disclosure or Discovery Is Provided After Filing).* If the motion is granted, or if the disclosure or requested discovery is provided after the motion was filed, the Court shall, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party, advocate or attorney advising that conduct, or all to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. Provided that the Court shall not order this payment if:

(A) The movant filed the motion before attempting in good faith to obtain the disclosure or discovery without Court action;

(B) The opposing party's nondisclosure, response, or objection was substantially justified; or

(C) Other circumstances make an award of expenses unjust.

(2) *If the Motion Is Denied.* If the motion is denied, the Court may issue any protective order authorized under Rule 803.14-6 and shall, after giving an opportunity to be heard, require the movant, the attorney or advocate filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney's fees. But the Court shall not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust.

(3) *If the Motion Is Granted in Part and Denied in Part.* If the motion is granted in part and denied in part, the Court may issue any protective order authorized under Rule 803.14-6 and may, after giving an opportunity to be heard, apportion the reasonable expenses, including attorney's fees, for the motion.

803.20-2. *Failure to Comply with a Court Order.*

(a) *Sanctions.* If the Court orders a deponent to be sworn or to answer a question and the deponent fails to obey, the failure may be treated as contempt of Court.

(b) *Sanctions by the Court.*

(1) *For Not Obeying a Discovery Order.* If a party fails to obey an order to provide or permit discovery, the Court may issue further just orders. They may

include the following:

- (A) Directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (B) Prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (C) Striking pleadings in whole or in part;
- (D) Staying further proceedings until the order is obeyed;
- (E) Dismissing the action or proceeding in whole or in part;
- (F) Rendering a default judgment against the disobedient party; or
- (G) Treating as contempt of Court the failure to obey any order, except an order to submit to a physical or mental examination.

(2) *For Not Producing a Person for Examination.* If a party fails to comply with an order under Rule 803.18-1 requiring it to produce another person for examination, the Court may issue any of the orders listed in Rule 803.20-2(b)(1), unless the disobedient party shows that it cannot produce the other person.

(3) *Payment of Expenses.* Instead of or in addition to the orders above, the Court may order the disobedient party, the attorney or advocate advising that party, or all to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

803.20-3. *Failure to Disclose, to Supplement an Earlier Response, or to Admit.*

(a) *Failure to Disclose or Supplement.* If a party fails to provide information or identify a witness as required by Rules 803.14-2, 803.14-5 or 803.14-7, the party shall not use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the Court, on motion and after giving an opportunity to be heard:

- (1) May order payment of the reasonable expenses, including attorney's fees, caused by the failure; and
- (2) May impose other appropriate sanctions, including any of the orders listed in Rule 803.20-2(b)(1).

(b) *Failure to Admit.* If a party fails to admit what is requested under Rule 803.19-1(a) and if the requesting party later proves a document to be genuine or the matter true, the requesting party may move that the party who failed to admit pay the reasonable expenses, including attorney's fees, incurred in making that proof. The Court shall so order unless:

- (1) The request was held objectionable under Rule 803.19-1;
- (2) The admission sought was of no substantial importance;
- (3) The party failing to admit had a reasonable ground to believe that it might prevail on the matter; or
- (4) There was other good reason for the failure to admit.

803.20-4. *Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Production.*

(a) *In General.*

(1) *Motion; Grounds for Sanctions.* The Court may, on motion, order sanctions if:

- (A) A party fails, after being served with proper notice, to appear for that

person's deposition; or

(B) A party, after being properly served with interrogatories or a request for production, fails to serve its answers, objections, or written response.

(2) *Certification.* A motion for sanctions for failing to answer or respond shall include a certification that the movant has in good faith conferred or attempted to confer with the party failing to act in an effort to obtain the answer or response without Court action.

(b) *Unacceptable Excuse for Failing to Act.* A failure described in Rule 803.20-4(a)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 803.14-6.

(c) *Types of Sanctions.* Sanctions may include any of the orders listed in Rule 803.20-2(b)(1). Instead of or in addition to these sanctions, the Court shall require the party failing to act, the attorney or advocate advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

803.20-5. *Failure to Provide Electronically Stored Information.* Absent exceptional circumstances, the Court may not impose sanctions under this Law on a party for failing to provide electronically stored information lost as a result of the routine, good-faith operation of an electronic information system.

803.20-6. *Failure to Participate in Framing a Discovery Plan or Pretrial Statement.* If a party or its attorney or advocate fails to participate in good faith in developing and submitting a proposed discovery plan or pretrial statement as required by Rule 803.12-1, the Court may, after giving an opportunity to be heard, require that party, advocate or attorney to pay to any other party the reasonable expenses, including attorney's fees, caused by the failure.

### **803.21. Dismissal of Action**

803.21-1. *Voluntary Dismissal.*

(a) *By the Plaintiff.*

(1) *Without a Court Order.* The plaintiff may dismiss an action without a Court order by filing:

(A) A notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or

(B) A stipulation of dismissal signed by all parties who have appeared.

(2) *Effect.* Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any action based on or including the same claim, a notice of dismissal operates as adjudication on the merits.

(b) *By Court Order; Effect.* Except as required in Rule 803.21-1(a)(1), an action may be dismissed at the plaintiff's request only by Court order, on terms that the Court considers proper. If a defendant has pleaded a counterclaim before being served with the plaintiff's motion to dismiss, the action may be dismissed over the defendant's objection only if the counterclaim can remain pending for independent adjudication. Unless the order states otherwise, a dismissal under this paragraph (b) is without prejudice.

803.21-2. *Involuntary Dismissal; Effect.* If the plaintiff fails to prosecute or to comply with this Law or a Court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision 803.21-2 and any dismissal not under this Rule—except one for lack of jurisdiction, improper venue, or failure to

join a party—operates as an adjudication on the merits.

803.21-3. *Dismissing a Counterclaim, Crossclaim, or Third-Party Claim.* This Rule applies to a dismissal of any counterclaim, crossclaim, or third-party claim. A claimant's voluntary dismissal under Rule 803.21-1(a)(1)(A) shall be made:

- (a) Before a responsive pleading is served; or
- (b) If there is no responsive pleading, before evidence is introduced at a hearing or trial.

803.21-4. *Costs of a Previously Dismissed Action.* If a plaintiff who previously dismissed an action in any Court files an action based on or including the same claim against the same defendant, the Court:

- (a) May order the plaintiff to pay all or part of the costs of that previous action; and
- (b) May stay the proceedings until the plaintiff has complied.

### **803.22. Consolidation; Separate Trials**

803.22-1. *Consolidation.* If actions before the Court involve a common question of law or fact, the Court may:

- (a) Join for hearing or trial any or all matters at issue in the actions;
- (b) Consolidate the actions; or
- (c) Issue any other orders to avoid unnecessary cost or delay.

803.22-2. *Separate Trials.* For convenience, to avoid prejudice, or to expedite and economize, the Court may order a separate trial of one (1) or more separate issues, claims, crossclaims, counterclaims, or third-party claims.

### **803.23. Taking Testimony**

803.23-1. *In Open Court.* At trial, the witnesses' testimony shall be taken in open Court unless this Law or other rules adopted by the Tribe provide otherwise. For good cause in compelling circumstances and with appropriate safeguards, the Court may permit testimony in open Court by contemporaneous transmission from a different location.

803.23-2. *Affirmation Instead of an Oath.* When this Law requires an oath, a solemn affirmation suffices.

803.23-3. *Evidence on a Motion.* When a motion relies on facts outside the record, the Court may hear the matter on affidavits or may hear it wholly or partly on oral testimony or on depositions.

803.23-4. *Interpreter.* The Court may appoint an interpreter of its choosing; fix reasonable compensation to be paid and designate the compensation as Court costs.

### **803.24. Subpoena**

803.24-1. In General.

- (a) *Form and Contents.*

(1) *Requirements—In General.* Every subpoena shall:

- (A) State the Court from which it issued;
- (B) State the title of the action, the Court in which it is pending, and its civil-action number; and
- (C) Command each person to whom it is directed to do the following at a specified time and place: attend and testify; produce designated documents, electronically stored information, or tangible things in that person's possession, custody, or control; or permit the inspection of premises.

(2) *Command to Attend a Deposition—Notice of the Recording Method.* A

subpoena commanding attendance at a deposition shall state the method for recording the testimony.

(3) *Combining or Separating a Command to Produce or to Permit Inspection; Specifying the Form for Electronically Stored Information.* A command to produce documents, electronically stored information, or tangible things or to permit the inspection of premises may be included in a subpoena commanding attendance at a deposition, hearing, or trial, or may be set out in a separate subpoena. A subpoena shall specify the form or forms in which electronically stored information is to be produced.

(4) *Command to Produce; Included Obligations.* A command in a subpoena to produce documents, electronically stored information, or tangible things requires the responding party to permit inspection, copying, testing, or sampling of the materials.

(b) *Issued.* A subpoena shall be issued for the following:

- (1) Attendance at a hearing or trial;
- (2) Attendance at a deposition; and
- (3) Production or inspection, if separate from a subpoena commanding a person's attendance.

(c) *Issued by Whom.* The clerk shall issue a subpoena, signed but otherwise in blank, to a party who requests it. That party shall complete it before service. An attorney also may issue and sign a subpoena as an officer of the Court in which the attorney is authorized to practice.

#### 803.24-2. *Service.*

(a) *By Whom; Tendering Fees; Serving a Copy of Certain Subpoenas.* Any person who is at least eighteen (18) years old and not a party may serve a subpoena. Serving a subpoena requires delivering a copy to the named person. If the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served, a notice shall be served on each party.

(b) *Proof of Service.* Proving service, when necessary, requires filing with the Court a statement showing the date and manner of service and the names of the persons served. The statement shall be certified by the server.

(c) *Subpoena Fees.* The party issuing the subpoena shall be responsible for tendering, if applicable, the fees for one (1) day's attendance and mileage. Payment shall be paid at the time of delivery of the subpoena in the amount as set by Court Rule.

(d) *Place of Service.* A subpoena may be served at any place:

- (1) Within the reservation;
- (2) Outside the reservation but within one hundred (100) miles of the place specified for the deposition, hearing, trial, production or inspection; or
- (3) That the Court authorizes on motion and for good cause.

#### 803.24-3. *Protecting a Person Subject to a Subpoena.*

(a) *Avoiding Undue Burden or Expense; Sanctions.* A party or attorney responsible for issuing and serving a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The Court shall impose an appropriate sanction—including, but not limited to, lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(b) *Command to Produce Materials or Permit Inspection.*

- (1) *Appearance Not Required.* A person commanded to produce documents,

electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(2) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party, advocate or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection shall be served before the earlier of the time specified for compliance or fourteen (14) days after the subpoena is served. If an objection is made, the following Rules apply:

(A) At any time, on notice to the commanded person, the serving party may move the Court for an order compelling production or inspection.

(B) These acts may be required only as directed in the order, and the order shall protect a person who is not a party from significant expense resulting from compliance.

(c) *Quashing or Modifying a Subpoena.*

(1) *When Required.* On motion, the Court shall quash or modify a subpoena that:

(A) Fails to allow a reasonable time to comply;

(B) requires a person who is not a party to travel more than one hundred (100) miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to Rule 803.24-3(c)(2)(C), the person may be commanded to attend a trial by traveling from any such place within the state of Wisconsin;

(C) Requires disclosure of privileged or other protected matter, if no exception or waiver applies; or

(D) Subjects a person to undue burden.

(2) *When Permitted.* To protect a person subject to or affected by a subpoena, the Court may, on motion, quash or modify the subpoena if it requires:

(A) Disclosing a trade secret or other confidential research, development, or commercial information;

(B) Disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or

(C) A person who is not a party to incur substantial expense to travel more than one hundred (100) miles to attend trial.

(3) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 803.24-3(c)(2), the Court may, instead of quashing or modifying a subpoena, order appearance, inspection or production under specified conditions if the serving party:

(A) Shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and

(B) Ensures that the subpoenaed person will be reasonably compensated.

803.24-4. *Duties in Responding to a Subpoena.*

(a) *Producing Documents or Electronically Stored Information.* These procedures apply to producing documents or electronically stored information:

(1) *Documents.* A person responding to a subpoena to produce documents shall produce them as they are kept in the ordinary course of business or shall organize

and label them to correspond to the categories in the subpoena.

(2) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding shall produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(3) *Electronically Stored Information Produced in Only One (1) Form.* The person responding need not produce the same electronically stored information in more than one (1) form.

(4) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding shall show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the Court may nonetheless order discovery from such sources if the requesting party shows good cause. The Court may specify conditions for the discovery.

(b) *Claiming Privilege or Protection.*

(1) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material shall:

(A) Expressly make the claim; and

(B) Describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(c) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party, advocate or attorney shall promptly return, sequester, or destroy the specified information and any copies it has; shall not use or disclose the information until the claim is resolved; shall take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the Court under seal for a determination of the claim. The person who produced the information shall preserve the information until the claim is resolved.

803.24-5. *Contempt.* The issuing Court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey shall be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 803.24-3(c)(1)(B).

### **803.25. Recesses; Personal Conduct**

803.25-1. *Recesses.* The Court may order postponements or recesses in its discretion at any time during the hearing for any reason. Specifically, when objections are made with respect to questions asked or evidence presented, or other motions are made during a hearing, the Court may order a short recess in order to deliberate on any motions or objections raised by a party.

(a) The recess shall continue until a decision is reached, which may be to reserve a ruling for later, at which time the hearing shall reconvene and the decision concerning the objection shall be entered into the record.

(b) A party may enter into the record an objection to the decision reached by the Court in order to preserve the issue on appeal, though such an objection is not required for such

preservation.

803.25-2. *Personal Conduct.* Parties, including parties' attorney or advocate, shall present and conduct themselves in a professional manner while before the Court. Parties shall be prepared to present their case, to include evidence, arguments and witnesses at the time of the hearing. Disorderly conduct, insulting or demeaning behavior, or interrupting a speaking judge, party, or party's attorney or advocate may be grounds for contempt and/or other penalties.

### **803.26. Contempt**

803.26-1. *Grounds.* In addition to other grounds for contempt identified in this Law or other Tribal law, the following acts or failures to act may serve as the basis for finding an individual or other entity in contempt:

- (a) Failure to obey a subpoena;
- (b) Refusal to testify or appear when so ordered;
- (c) Refusal to obey any order or judgment of the Court;
- (d) Disorderly, demeaning, or insulting behavior toward a Judge while conducting a hearing which tends to interrupt the course of the proceedings or undermine the dignity of the Court;
- (e) A breach of the peace or loud or boisterous conduct which tends to interrupt the course of a judicial proceeding;
- (f) Deceit or abuse of process or proceedings of the Court by a party, advocate or attorney to a judicial proceeding;
- (g) Any other interference with the process, proceedings, or dignity of the Court or a Judge while in the performance of official duties.

803.26-2. *Relief.* Individuals or other entities found to be in contempt shall be subject to a fine in an amount not to exceed one thousand dollars (\$1,000) per act of contempt, and not to exceed five thousand dollars (\$5,000) per instance of continuing contempt payable to the Judiciary or to the complaining party. When that individual or other entity either pays the money or does whatever the Court orders that person to do, the contempt order shall be purged.

803.26-3. *Procedure.*

- (a) Direct contempt is one committed in the presence of the Court or so near in presence as to be disruptive of the judicial proceedings, and such may be adjudged and punished summarily. All others are indirect contempt.
- (b) Indirect contempt may be determined after a hearing in which the person accused of contempt is given notice and an opportunity to be heard.
  - (1) The Court may, after testimony is given concerning the reasons for any contemptuous act, allow the person accused one (1) opportunity to comply or be held in contempt.
- (c) The Court may, in its discretion or on motion by a party, resolve issues of indirect contempt through receipt and deliberation of briefs rather than a hearing.

### **803.27. Findings and Conclusions by the Court; Judgment on Partial Findings; Offer of Judgment**

803.27-1. *Findings and Conclusions.*

- (a) *In General.* The Court shall state the findings of facts and its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the Court.
- (b) *For an Interlocutory Injunction.* In granting or refusing an interlocutory injunction,

the Court shall similarly state the findings and conclusions that support its action.

(c) *For a Motion.* The Court is not required to state findings or conclusions when ruling on a motion unless this Law provide otherwise.

(d) *Questioning the Evidentiary Support.* A party may later question the sufficiency of the evidence supporting the findings, whether or not the party requested findings, objected to them, moved to amend them, or moved for partial findings.

803.27-2. *Amended or Additional Findings.* On a party's motion filed no later than twenty-eight (28) days after the entry of judgment, the Court may amend its findings or make additional findings and may amend the judgment accordingly. The motion may accompany a motion for a new trial.

803.27-3. *Judgment on Partial Findings.* If a party has been fully heard on an issue and the Court finds against the party on that issue, the Court may enter judgment against the party on a claim or defense that, under the controlling law, can be maintained or defeated only with a favorable finding on that issue. The Court may, however, decline to render any judgment until the close of the evidence. A judgment on partial findings shall be supported by findings of fact and conclusions of law as required by Rule 803.27-1(a).

803.27-4. *Offer of Judgment.*

(a) *Making an Offer; Judgment on an Accepted Offer.* At any time before or during trial, a party may serve on an opposing party an offer to allow judgment on specified terms, with the costs then accrued. If the opposing party serves written notice accepting the offer, either party may then file the offer and notice of acceptance, plus proof of service. The Court shall then enter judgment.

(b) *Unaccepted Offer.* An unaccepted offer shall be considered withdrawn, but it shall not preclude a later offer. Evidence of an unaccepted offer shall not be admissible except in a proceeding to determine costs.

### **803.28. Judgment; Costs**

803.28-1. *Generally.* A decision includes any final order or judgment that may be appealed to the Court of Appeals. No special form of judgment is required. A judgment shall not include recitals of pleadings or a record of prior proceedings, unless the Court deems that information necessary.

803.28-2. *Types of Relief.*

(a) Every final decision of the Court shall grant relief based in law and equity to the party in whose favor the decision is rendered. Relief granted need not be identical to the relief demanded in the pleadings or at a hearing.

(b) *Judgment on Multiple Claims or Involving Multiple Parties.* When an action presents more than one (1) claim for relief—whether as a claim, counterclaim, crossclaim, or third-party claim—or when multiple parties are involved, the Court may direct entry of a final judgment as to one (1) or more, but fewer than all, claims or parties only if the Court expressly determines that there is no just reason for delay. Otherwise, any order or other decision, however designated, that adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not end the action as to any of the claims or parties and may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities.

803.28-3. *Form of Decision.* The Court may issue decisions in the form of fines, orders, penalties, or others the Court deems appropriate, which may include, but not limited to:

(a) Awarding monetary damages, including punitive damages, to be paid by the party found to be in violation of any Tribal law, to the injured party;

- (b) Directing the surrender of certain property to the injured party which the injured party is found to be legally entitled;
- (c) Directing the performance of some act or the ceasing and desisting from performance of some act for the benefit of the injured party;
- (d) Directing a party in violation of Tribal laws to cease and desist from further violations and cure said violations within a specified period of time;
- (e) Directing the payment of specific monetary fines for violations of Tribal laws, Court orders or agreements made during mediation or peacemaking;
- (f) Directing mandated community service and/or denial of specific Tribal benefits;

803.28-4. *Costs.*

- (a) The Court may, in its discretion, require the non-prevailing party to pay some or all of the reasonable costs of the prevailing party.
- (b) *Attorney's Fees.* The Court shall not award attorney's fees unless:
  - (1) The fees have been specifically provided for by Tribal law, contract or agreement between the parties in dispute;
  - (2) It has been clearly and convincingly shown that the case is frivolous or has been prosecuted in bad faith for purposes of harassment only; or
  - (3) It has been shown that there was no reasonable expectation of success on the part of the claiming party.
- (c) If the Court finds by clear and convincing evidence that the matter before the Court was frivolous or has been prosecuted in bad faith, the Court may assess against the plaintiff, some or all of the Court's and/or defendant's costs in the matter.
- (d) Court costs shall be based on actual cost or set by Court Rule.

803.28-5. *Punitive Damages.* A party may recover punitive damages against another party unless the other party is the Tribe, or an officer or agency of the Tribe. The Court shall only order punitive damages when a party's willful or reckless conduct is exceptionally egregious or malicious and the order will deter that party and others from committing the same or similar acts in the future. Punitive damages shall not exceed an amount greater than four (4) times the amount of any other monetary damages ordered. In cases involving non-economic harm where punitive damages are ordered, the Court shall determine punitive damages by considering:

- (a) The nature of the wrongdoer's behavior;
- (b) The extent of the prevailing party's loss or injury;
- (c) The degree to which the wrongdoer's conduct is offensive to a societal sense of justice and decency; and
- (d) The financial worth of the wrongdoer.

**803.29. Default; Default Judgment**

803.29-1. *Appearance Required.* Parties to a case are required to appear before the Court at any scheduled hearing or proceeding.

- (a) A party may be excused from appearing with the permission of the Court if the party makes a motion seeking permission prior to the hearing or proceeding and shows good cause as to why the party's appearance is not necessary.
- (b) The Court may allow a proceeding to continue without a party's appearance so long as a representative of the party appears, or may postpone the hearing until the party will attend, or may find the party not in attendance in contempt for failing to appear.
- (c) The Court may allow a party to appear by telephone. Requests to appear by telephone shall be in writing and submitted at least seven (7) days before a hearing or proceeding.

803.29-2. *Defendant.* When a party against whom a judgment for relief is sought has failed to

appear, plead or otherwise defend as required in this Law or elsewhere, a default judgment may be granted by the Court upon the receipt of whatever evidence is deemed necessary to establish the claim.

803.29-3. *Plaintiff.* When a party who has filed a claim fails to appear, plead, or prosecute said claim as provided in this Law or elsewhere, a dismissal may be granted by the Court, on its own or on a party's motion, dismissing the claim. For purposes of this section, dismissal shall be treated as default.

803.29-4. *Entering a Default Judgment.* The Court may conduct hearings or make referrals when, to enter or effectuate judgment, it needs to:

- (a) Conduct an accounting;
- (b) Determine the amount of damages;
- (c) Establish the truth of any allegation by evidence; or
- (d) Investigate any other matter.

803.29-5. *Demand for Judgment.* The Court may assign any costs incurred by the non-defaulting party and any hearing costs incurred by the Court, to the defaulting party.

803.29-6. *Setting Aside a Default or a Default Judgment.* The Court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 803.33-2 within one (1) year of entry of default or default judgment.

### **803.30. Summary Judgment**

803.30-1. *Motion for Summary Judgment or Partial Summary Judgment.* A party may move for summary judgment, identifying each claim or defense—or the part of each claim or defense—on which summary judgment is sought. The Court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The Court shall state on the record the reasons for granting or denying the motion.

803.30-2. *Time to File a Motion.* Unless a different time is set by the Court, a party may file a motion for summary judgment at any time after commencement of an action, but at least fifteen (15) days prior to the scheduled trial.

803.30-3. *Procedures.*

(a) *Supporting Factual Positions.* A party asserting that a fact cannot be or is genuinely disputed shall support the assertion by:

- (1) Citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (2) Showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(b) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(c) *Materials Not Cited.* The Court need consider only the cited materials, but it may consider other materials in the record.

(d) *Affidavits.* An affidavit used to support or oppose a motion shall be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated.

803.30-4. *When Facts Are Unavailable to the Nonmovant.* If a nonmovant shows by affidavit

that, for specified reasons, it cannot present facts essential to justify its opposition, the Court may:

- (a) Defer considering the motion or deny it;
- (b) Allow time to obtain affidavits or to take discovery; or
- (c) Issue any other appropriate order.

803.30-5. *Failing to Properly Support or Address a Fact.* If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 803.30-3, the Court may:

- (a) Give an opportunity to properly support or address the fact;
- (b) Consider the fact undisputed for purposes of the motion;
- (c) grant summary judgment if the motion and supporting materials—including the facts considered undisputed—show that the movant is entitled to it; or
- (d) Issue any other appropriate order.

803.30-6. *Judgment Independent of the Motion.* After giving notice and a reasonable time to respond, the Court may:

- (a) Grant summary judgment for a nonmovant;
- (b) Grant the motion on grounds not raised by a party; or
- (c) Consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

803.30-7. *Failing to Grant All the Requested Relief.* If the Court does not grant all the relief requested by the motion, it may enter an order stating any material fact—including an item of damages or other relief—that is not genuinely in dispute and treating the fact as established in the case.

803.30-8. *Affidavit Submitted in Bad Faith.* If satisfied that an affidavit under this Rule is submitted in bad faith or solely for delay, the Court—after notice and a reasonable time to respond—may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, incurred as a result. An offending party, advocate or attorney may also be held in contempt or subjected to other appropriate sanctions.

### **803.31. Entering Judgment; Enforcement**

803.31-1. *Entering Judgment.*

- (a) *Signature.* All decisions shall be signed by the Judge assigned to the case and filed with the clerk.
- (b) *Filing and Notation.* A decision shall be complete and entered for all purposes when it is signed and filed with the clerk for publication, unless the case is nonpublic and/or not subject to publication in which case it is deemed complete and entered upon being signed by the Judge. The clerk shall make a notation of the decision in a case log or index of cases and decisions. If publication occurs more than seven (7) days after entry of the decision, this shall be noted and the date of publication shall be the official date of entry.
- (c) *Death of a Party.* If a party dies after a decision is rendered upon any issue or fact, but before entry of the judgment, judgment may still be entered.
- (d) *Satisfaction of Decision.* The clerk shall file all satisfactions of decisions and note whether whole or partial and the amount thereof in any existing case log or index of cases and decisions. A decision may be satisfied, in whole or part, as to any or all of the non-prevailing parties, when:
  - (1) The party awarded the decision files an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction; or
  - (2) The Trial Court may order the entry of satisfaction upon the proof of payment

by the debtor and failure of the decision creditor to file a satisfaction;  
(e) *Effect of Satisfaction.* A decision satisfied in whole shall be entered in the index of decisions as such.

(1) A partially satisfied decision or unsatisfied decision shall continue in effect for four (4) years or until satisfied, whichever occurs sooner.

(2) An action to renew the decision remaining unsatisfied may be maintained any time prior to the expiration of four (4) years and shall extend the period of an additional four (4) years and may be thereafter further extended by the same procedure.

(f) *Written Decisions.* All decisions, opinions, and orders rendered, unless specified otherwise in this Law, shall be in writing and include the findings of fact and conclusions of law.

(1) Upon completion of the hearing or trial, the Court shall complete a written decision within thirty (30) days.

(A) The Court may, upon written notice to all parties, extend this time period to not more than an additional thirty (30) days from the original due date.

#### 803.31-2. *Enforcement.*

(a) *Time.* The non-prevailing party shall have sixty (60) days from entry of the judgment to comply with the order of the Court and/or complete payment of any monetary award or to make arrangements with the prevailing party for payment or installment payments. If the non-prevailing party does not comply and/or satisfy the judgment within sixty (60) days, does not make arrangements to satisfy judgment within sixty (60) days, or fails to make installment payments to satisfy judgment for more than sixty (60) days, then the prevailing party may make a motion to the Court for the enforcement of the decision.

(b) *Means of Enforcement.* The Court shall conduct a hearing on the issue of enforcement of a judgment. The Court may:

(1) Order the garnishment of any non-prevailing party's wages, including but not limited to per capita payments by the Tribe, the amount to be determined by the Court and to be paid to the prevailing party;

(2) Fine the non-prevailing party if the non-prevailing party is found to be in contempt of the judgment. Fines shall be paid to the prevailing party; or

(3) Issue any other order or decision for the purposes of satisfying the judgment which the Court deems just.

(4) If it is determined at this hearing that any of the above options for the enforcement are unavailable or unduly difficult or inequitable, the Court may order the execution and sale of such property of the non-prevailing party's to satisfy the judgment.

(c) *Seizure of Property.* The non-prevailing party shall be ordered to appear before the Court and answer under oath regarding the reasons for failure to satisfy the judgment. If good cause is not shown for the failure to satisfy the judgment, the Court may:

(1) Determine, under Wisconsin law, what property of the non-prevailing party is available for execution;

(2) Issue an order for the seizure of as much of such property as reasonably necessary to pay the judgment amount and costs of seizing and auctioning such property;

(A) The order for seizure shall be issued to and enforced by the Oneida Police Department (OPD);

- (B) The non-prevailing party shall have, starting on the day after seizure of property, ten (10) days to satisfy the judgment and redeem the property seized from the OPD. If redemption is not made, the OPD shall proceed with the sale of seized property.
  - (C) Sale of seized property shall be at public auction conducted by the OPD. The person conducting the auction:
    - (i) Shall place public notice in at least three (3) prominent places within the Oneida Reservation and publication in the Tribal newspaper, at least ten (10) days prior to the auction.
    - (ii) Shall sell the property to the highest bidder who shall make payment for the property at the time of sale.
    - (iii) Shall issue a certificate of sale to the purchaser and shall make a report and return to the Court reciting the details of the sale.
    - (iv) May postpone and reschedule the auction, providing notice of the new date as per sub part (i) above, if there is deemed to be inadequate response to the auction or bidding.
  - (D) The sale shall not be deemed full satisfaction of the judgment unless such sale actually fully satisfies the judgment. Any excess proceeds from the sale shall be issued to the non-prevailing party.
- (d) *Exemption from Enforcement.* The Court shall only order seizure and sale of such property of the non-prevailing party to satisfy a money judgment, the loss of which shall not impose an immediate and substantial hardship on the non-prevailing party or the non-prevailing party's immediate family.

### **803.32. Record of Proceedings**

803.32-1. *Generally.* All proceedings shall be recorded by audio, video or other means such that an accurate transcript may be produced when needed or requested. The record of the civil action shall include the following:

- (a) All pleadings, motions, orders, and intermediate rulings;
- (b) All evidence received or considered;
- (c) All statements of matters officially noticed;
- (d) All questions and offers of proof, objections and rulings thereon;
- (e) All proposed findings and exceptions;
- (f) All decisions, opinions or reports of the Court; and
- (g) A complete record of the hearing itself, in the form of written transcript, video or audio recordings.

803.32-2. *Open Record.* The records of all hearings and matters shall be available except where they are prohibited from disclosure by this Law, any other Tribal law or Court order or rule.

- (a) The Court shall be construed as a Court of record for purposes of full faith and credit.
- (b) Any person may request to view the record of any case and may receive copies of the record at that person's expense.
  - (1) Records of cases involving juveniles shall remain confidential and shall only be viewed by the parties or the legal guardian of a party who is a minor and their attorney or advocate, Judges and staff assigned to the case, and those other persons who first obtain a written release from a party to view material contained in the record.
  - (2) Copies of final decisions and case file material shall be available for any

person's review at that person's expense after the time line for filing a notice of appeal or motion for reconsideration has passed and no such filing has occurred. This shall ensure that the case is concluded and open for public record.

(3) At the request of any party or on its own motion, the Court may seal any part of a case file, preventing public disclosure. A file or part of a file may only be sealed where the safety of a party, witness or other individual may be in jeopardy if the material is not placed under seal.

(c) Deliberations of the Court are confidential, not part of the record and are not subject to reproduction.

### **803.33. Relief from a Judgment or Order; Harmless Error**

803.33-1. *Corrections Based on Clerical Mistakes; Oversights and Omissions.* The Court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record. The Court may do so on motion or on its own, with or without notice. But after an appeal has been docketed in the Court of Appeals and while it is pending, such a mistake may be corrected only with the Court of Appeals' leave.

803.33-2. *Grounds for Relief from a Final Judgment, Order, or Proceeding.* On motion and just terms, the Court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:

- (a) Mistake, inadvertence, surprise, or excusable neglect;
- (b) Newly discovered evidence that, with reasonable diligence, could not have been discovered;
- (c) Fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (d) The judgment is void;
- (e) The judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (f) Any other reason that justifies relief.

803.33-3. *Timing and Effect of the Motion.*

(a) *Timing.* A motion under Rule 803.33-2 shall be made within a reasonable time—and for reasons (a), (b), and (c) no more than one (1) year after the entry of the judgment or order or the date of the proceeding.

(b) *Effect on Finality.* The motion shall not affect the judgment's finality or suspend its operation.

803.33-4. *Other Powers to Grant Relief.* This Rule shall not limit the Court's power to:

- (a) Entertain an independent action to relieve a party from a judgment, order, or proceeding;
- (b) Grant relief to a defendant who was not personally notified of the action; or
- (c) Set aside a judgment for fraud on the Court.

803.33-5. *Harmless Error.* Unless justice requires otherwise, no error in admitting or excluding evidence—or any other error by the Court or a party—is grounds for granting a new trial, for setting aside a verdict, or for vacating, modifying, or otherwise disturbing a judgment or order.

### **803.34. Stay of Proceedings to Enforce a Judgment**

803.34-1. *Automatic Stay; Exceptions for Injunctions.* Except as stated in this Rule, no execution may issue on a judgment, nor may proceedings be taken to enforce it, until fourteen (14) days have passed after its entry. But unless the Court orders otherwise, interlocutory or final

judgments in an action for an injunction are not stayed after being entered, even if an appeal is taken.

803.34-2. *Stay Pending the Disposition of a Motion.* On appropriate terms for the opposing party's security, the Court may stay the execution of a judgment—or any proceedings to enforce it—pending disposition of any of the following motions:

- (a) For judgment as a matter of law;
- (b) To amend the findings or for additional findings;
- (c) For a new trial or to alter or amend a judgment; or
- (d) For relief from a judgment or order.

803.34-3. *Injunction Pending an Appeal.* While an appeal is pending from an interlocutory order or final judgment that grants, dissolves, or denies an injunction, the Court may suspend, modify, restore, or grant an injunction on terms that secure the opposing party's rights.

803.34-4. *Court of Appeals' Power Not Limited.* This Rule shall not limit the power of the Court of Appeals or one (1) of its Judges:

- (a) To stay proceedings—or suspend, modify, restore, or grant an injunction—while an appeal is pending; or
- (b) To issue an order to preserve the status quo or the effectiveness of the judgment to be entered.

803.34-5. *Stay with Multiple Claims or Parties.* The Court may stay the enforcement of a final judgment under Rule 803.28-2(b) until it enters a later judgment or judgments, and may prescribe terms necessary to secure the benefit of the stayed judgment for the party in whose favor it was entered.

803.34-6. *Stay in Favor of the Tribe, or Agency Thereof.* When an appeal is taken by the Tribe, or an officer or agency of the Tribe, and the execution or enforcement of the judgment is stayed; no bond, obligation, or other security shall be required.

### **803.35 Injunctions and Restraining Orders**

803.35-1 *Preliminary Injunction.*

- (a) *Notice.* The Court may issue a preliminary injunction only on notice to the adverse party.
- (b) *Consolidating the Hearing with the Trial on the Merits.* Before or after beginning the hearing on a motion for a preliminary injunction, the Court may advance the trial on the merits and consolidate it with the hearing. Even when consolidation is not ordered, evidence that is received on the motion and that would be admissible at trial becomes part of the trial record and need not be repeated at trial.
- (c) *Expediting the Preliminary-Injunction Hearing.* If the order is issued without notice, the motion for a preliminary injunction shall be set for hearing at the earliest possible time, taking precedence over all other matters except hearings on older matters of the same character. At the hearing, the party who obtained the order shall proceed with the motion; if the party does not, the Court shall dissolve the order.

803.35-2. *Temporary Restraining Order.*

- (a) *Issuing Without Notice.* The Court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney or advocate only if:
  - (1) Specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
  - (2) The movant's attorney or advocate certifies in writing any efforts made to give notice and the reasons why it should not be required to give notice.

(b) *Contents; Expiration.* Every temporary restraining order issued without notice shall state the date and hour it was issued; describe the injury and state why it is irreparable; state why the order was issued without notice; and be promptly filed in the clerk's office and entered in the record. The order expires at the time after entry—not to exceed fourteen (14) days—that the Court sets, unless before that time the Court, for good cause, extends it for a like period or the adverse party consents to a longer extension. The reasons for an extension shall be entered in the record.

(d) *Motion to Dissolve.* On two (2) days' notice to the party who obtained the order without notice—or on shorter notice set by the Court—the adverse party may appear and move to dissolve or modify the order. The Court shall then hear and decide the motion as promptly as justice requires.

803.35-3. *Security.* The Court may issue a preliminary injunction or a temporary restraining order only if the movant gives security, unless the movant is the Tribe, or an officer or agency of the Tribe. Security shall be in an amount that the Court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.

803.35-4. *Contents and Scope of Every Injunction and Restraining Order.*

(a) *Contents.* Every order granting an injunction and every restraining order shall:

- (1) State the reasons why it issued;
- (2) State its terms specifically; and
- (3) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

(b) *Persons Bound.* The order binds only the following who receive actual notice of it by personal service or otherwise:

- (1) The parties;
- (2) The parties' officers, agents, servants, employees, and attorneys or advocate; and
- (3) Other persons who are in active concert or participation with anyone described in Rule 803.35-4(b)(1) or (2).

### **803.36. Behavior, Disability, Disqualification of Judges**

803.36-1. *Judicial Code of Conduct.* All Judges are subject to the Rules and standards of the Oneida Tribal Judiciary Canons of Judicial Conduct as specified in that document.

803.36-2. *Disability and Disqualification.* Rule 150.12 of the Judiciary law shall govern the reprimand, suspension and/or removal of a Judge.

### **803.37. Guardian Ad Litem**

803.37-1. This section shall govern the appointment, conduct, duties and powers of guardian's ad litem where it is appropriate and authorized under Tribal Law. This section, 803.37, shall apply in every situation where a guardian ad litem is necessary, except where other Tribal Law is more specific regarding guardians ad litem, then those laws shall supersede.

(a) A guardian ad litem shall be an attorney or trained advocate. Before being appointed as guardian ad litem, advocates shall demonstrate an understanding of the role of the guardian ad litem. Such understanding may be demonstrated by passing an examination administered by the Judiciary or by an interview conducted by the Chief Judge, Family Court Judge or such other means determined by the Judiciary.

(b) *Represent Best Interests.* A guardian ad litem shall represent the best interest of the person for whom he or she is appointed. Representation of best interests may be inconsistent with the wishes of the person whose interest the guardian ad litem represents.

The guardian ad litem shall not advocate on behalf of or advise any party so as to create in the mind of a reasonable person the appearance of representing that party as an attorney or an advocate.

(c) *Maintain Independence.* A guardian ad litem shall maintain independence, objectivity and the appearance of fairness in dealings with parties and professionals, both in and out of the courtroom.

(d) *Professional Conduct.* A guardian ad litem shall act in a manner consistent with the Judge's obligations under Rule 1.7 of the Oneida Tribal Judiciary Canons of Judicial Conduct.

(e) *Avoid Conflicts of Interest.* No person who is an interested party in a proceeding, appears as an attorney or advocate in a proceeding on behalf of any party, or is a relative or representative of an interested party may be appointed guardian ad litem in that proceeding. A guardian ad litem shall:

(1) Avoid any actual or apparent conflict of interest or impropriety in the performance of guardian ad litem responsibilities.

(2) Avoid self-dealing or association from which a guardian ad litem might directly or indirectly benefit, other than for compensation as guardian ad litem.

(3) Take action immediately to resolve any potential conflict or impropriety and advise the Court and the parties of action taken, resign from the matter, or seek Court direction as may be necessary to resolve the conflict or impropriety.

(4) Not accept or maintain appointment if the performance of the duties of guardian ad litem may be materially limited by the guardian's ad litem responsibilities to another client or a third person, or by the guardian's ad litem own interests.

(f) *Treat parties with respect.* A guardian ad litem is an officer of the Court and as such shall at all times treat the parties with respect, courtesy, fairness and good faith.

(g) *Become informed about case.* A guardian ad litem shall make reasonable efforts to become informed about the facts of the case and to contact all parties. A guardian ad litem shall examine material information and sources of information, taking into account the positions of the parties.

(h) *Make requests for evaluations to Court.* A guardian ad litem shall not require any evaluations or tests of any person except as required by Tribal Law or Court order issued following notice and opportunity to be heard.

(i) *Timely inform the Court of relevant information.* A guardian ad litem shall file a written report with the Court and the parties as required by law or Court order, or in any event not later than five (5) business days prior to a hearing for which a report is required. The report shall be accompanied by a written list of documents considered or called to the attention of the guardian ad litem and persons interviewed during the course of the investigation.

(j) *Limit duties to those ordered by Court.* A guardian ad litem shall comply with the Court's instructions as set out in the order appointing a guardian ad litem, and shall not provide or require services beyond the scope of the Court's instruction unless by motion and on adequate notice to the parties, a guardian ad litem obtains additional instruction, clarification or expansion of the scope of such appointment.

(1) A guardian ad litem shall not be called as a witness in any proceeding or hearing in which he/she is a guardian ad litem, except where, with the Court's permission, clarification is requested regarding the guardian ad litem's report. In such case, testimony shall be restricted to that which is needed to clarify such

report.

(k) *Inform individuals about role in case.* A guardian ad litem shall identify him or herself as a guardian ad litem when contacting individuals in the course of a particular case and inform individuals contacted in a particular case about the role of a guardian ad litem in the case at the earliest practicable time. A guardian ad litem shall advise information sources that the documents and information obtained may become part of Court proceedings.

(l) *Appear at hearings.* The guardian ad litem shall be given notice of all hearings and proceedings. A guardian ad litem shall appear at any hearing for which the duties of a guardian ad litem or any issues substantially within a guardian ad litem's duties and scope of appointment are to be addressed.

(m) *Ex parte communication.* A guardian ad litem shall not have ex parte communications concerning the case with the Judge(s) involved in the matter except as permitted by Court Rule or by Tribal Law.

(n) *Maintain privacy of parties.* As an officer of the Court, a guardian ad litem shall make no disclosures about the case or the investigation except in reports to the Court or as necessary to perform the duties of a guardian ad litem. A guardian ad litem shall maintain the confidential nature of identifiers or addresses where there are allegations of domestic violence or risk to a party's or child's safety. The guardian ad litem may recommend that the Court seal the report or a portion of the report of the guardian ad litem to preserve the privacy, confidentiality, or safety of the parties or the person for whom the guardian ad litem was appointed. The Court may, upon application, and under such conditions as may be necessary to protect the witnesses from potential harm, order disclosure or discovery that addresses the need to challenge the truth of the information received from the confidential source.

(o) *Perform duties in timely manner.* A guardian ad litem shall perform responsibilities in a prompt and timely manner, and, if necessary, request timely Court reviews and judicial intervention in writing with notice to parties or affected agencies.

(p) *Maintain documentation.* A guardian ad litem shall maintain documentation to substantiate recommendations and conclusions and shall keep records of actions taken by the guardian ad litem.

(q) *Keep records of time and expenses.* A guardian ad litem shall keep accurate records of the time spent, services rendered, and expenses incurred in each case and file an itemized statement and accounting with the Court and provide a copy to each party or other entity responsible for payment. The Court may make provisions for fees and expenses pursuant to Tribal Law or Court Rule in the Order Appointing Guardian ad Litem or in any subsequent order.

(r) At final paternity hearings, dispositional hearings and at other times when appropriate, the guardian ad litem shall provide a written report to the Court with his or her recommendations. The recommendations shall be based upon a full and independent investigation of the facts. The report shall include:

- (1) The sources of information used by the guardian ad litem;
- (2) What home visits were done by the guardian ad litem and the results of the visits;
- (3) Who the guardian ad litem interviewed including parents, relatives and professionals;
- (4) Whether the guardian ad litem had contact with the child or children;
- (5) Relevant provisions of the law; and

- (6) The guardian ad litem's recommendation on the contested issues
- (s) The appointment of a guardian ad litem terminates upon the entry of the Court's final order or upon the termination of any appeal in which the guardian ad litem participates.
- (t) As an officer of the Court, a guardian ad litem has only such authority conferred by the order of appointment. A guardian ad litem shall have the following authority:
- (1) *Access to party.* Unless circumstances warrant otherwise, a guardian ad litem shall have access to the persons for whom a guardian ad litem is appointed and to all information relevant to the issues for which a guardian ad litem was appointed.
    - (A) The access of a guardian ad litem to the child and all relevant information shall not be unduly restricted by any person or agency.
    - (B) When the guardian ad litem seeks contact with a party who is represented by an attorney or advocate, the guardian ad litem shall notify the attorney or advocate in advance of such contact. The guardian ad litem's contact with the represented party shall be as permitted by the party's attorney or advocate, unless otherwise ordered by the Court.
  - (2) *Timely receipt of case documents.* Until discharged by Court order a guardian ad litem shall be timely furnished copies of all relevant pleadings, documents, and reports by the party which served or submitted them.
  - (3) *Timely notification.* A guardian ad litem shall be timely notified of all Court hearings, administrative reviews, staffing's, investigations, dispositions, and other proceedings concerning the case by the person or agency scheduling the proceeding.
  - (4) *Notice of proposed agreements.* A guardian ad litem shall be given notice of, and an opportunity to indicate his or her agreement or objection to any proposed agreed order of the parties governing issues substantially related to the duties of a guardian ad litem.
  - (5) *Participate in all proceedings.* A guardian ad litem shall participate in Court hearings through submission of written and supplemental oral reports and as otherwise authorized by Tribal law or Court Rule.
  - (6) *Access to records.* Except as limited by law or unless good cause is shown to the Court, upon receiving a copy of the order appointing a guardian ad litem, any person or agency shall permit a guardian ad litem to inspect and copy any and all records and interview personnel relating to the proceeding for which a guardian ad litem is appointed. Examples of persons and agencies to whom this provision applies include but not limited to any hospital, school, child care provider, organization, department of social and health services, doctor, health care provider, mental health provider, chemical health program, psychologist, psychiatrist, or law enforcement agency.
  - (7) *Access to Court files.* Within the scope of appointment, a guardian ad litem shall have access to all relevant Judiciary files. Access to sealed or confidential files shall be by separate order. A guardian ad litem's report shall inform the Court and parties if the report contains information from sealed or confidential files. The clerk of Court shall provide certified copies of the order of appointment to a guardian ad litem upon request and without charge.
- (u) *Rights and powers.* In every case in which a guardian ad litem is appointed, a guardian ad litem shall have the rights and powers set forth below. These rights and powers are subject to all applicable Tribal laws and Court Rules.

- (1) *File documents and respond to discovery.* A guardian ad litem shall have the right to file pleadings, motions, notices memoranda, briefs, and other documents, and may, subject to the Trial Court's discretion engage in and respond to discovery.
- (2) *Note motions and request hearings.* A guardian ad litem shall have the right to make motions and request hearings before the Court as appropriate to the best interests of the person(s) for whom a guardian ad litem was appointed.
- (3) *Introduce exhibits, examine witnesses, and appeal.* A guardian ad litem shall have the right, subject to the Court's discretion, to introduce exhibits, subpoena witnesses, and conduct direct and cross examination of witnesses.
- (4) *Oral argument and submission of reports.* A guardian ad litem shall have the right to fully participate in the proceedings through submission of written reports, and, may with the consent of the Court present oral argument.
- (v) *Additional rights and powers in other cases.* For good cause shown, a guardian ad litem may petition the Court for additional authority.

### **803.38. Hearing Procedure**

803.38-1. *General Procedure.* The Court shall follow the procedures contained below for all hearings and trials, but may in its discretion shorten or eliminate procedural steps that are unnecessary for a particular hearing which may not be complex enough to warrant every step contained below.

(a) *Hearing is called to Order.*

- (1) The full name of the Court is stated.
- (2) The name of the presiding Judge is stated.
- (3) A statement of authority and jurisdiction is made, making reference to General Tribal Council Resolution 01-07-13-Band Judiciary Law, Chapter 150 of the Oneida Code of Laws or, if in Family Court, Family Court Law, Chapter 151 of the Oneida Code of Laws.
- (4) The docket number of the civil case and the names of all parties are stated for the record. Advocates for parties shall state their name for the record.

(b) *Pending Motions.* All pending motions are resolved prior to the commencement of the full hearing.

- (1) Motions filed less than fourteen (14) days prior to the hearing shall only be considered and decided in accordance with Rule 803.7-5(d).

(c) *Stipulations; Additional Documents.* All stipulations or matters officially noted which are known to the parties or Judge prior to the hearing shall be entered into the record.

- (1) Either party with additional documents to submit for the Court's review which was not submitted two (2) days prior to the hearing may attempt to submit these documents at this time.
- (2) A party attempting to submit additional documents shall have a copy for each Judge and the opposing party and shall show good cause as to why the documents were not submitted prior to the hearing.
- (3) The Court may accept or deny the submission of documents immediately, or postpone a decision as to the reasonableness for the untimely submission until the close of the hearing.

803.38-2. *Order of Presentation.* The Parties shall proceed in this order:

- (a) Parties' Opening Statements;

- (1) Plaintiff's opening statement.
- (2) Defendant's opening Statement.
- (b) The plaintiff's case;
- (c) The defendant's case;
- (d) Plaintiff rebuttal;
- (e) Defendant rebuttal;
- (f) Plaintiff closing statement;
- (g) Defendant closing statement.

**803.39. Appeals**

803.39-1. *Where to Appeal.* All requests for an appeal from a decision of any lower hearing body or Court shall be heard by the Court of Appeals.

803.39-2. *Appellate Procedure.* Upon commencement of the appellate action, parties shall be required to follow the Court of Appeals' Rules of Procedure, Chapter 154 of the Oneida Code of Laws.

*End.*

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Adopted BC-04-25-14-A